

# **PROFESSIONAL SERVICES AGREEMENT (PSA) MANUAL**

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## **NOTICE TO USERS:**

Before using this Manual for any procurement, check with your Professional Services Coordinator (PSC). This Manual is routinely updated and any copy you retain may not be current. DOT&PF Professional Services Coordinators are:

Bob Saviers, DOT&PF Southeast Region PSC, Juneau .....	465-4420
Jim Bennett, P.E., DOT&PF Northern Region PSC, Fairbanks .....	451-2320
Jim Amundsen, P.E., DOT&PF Central Region PSC, Anchorage .....	269-0415

Comments or proposed modifications relating to the content of this manual shall be made in writing to the Chief Contracts Officer, Commissioner's Office, DOT&PF (MS 2500)

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# INTRODUCTION

## PURPOSE

This manual provides procurement instructions for "construction related" Professional Services Agreements (PSA)s defined by AS 36.30.990 as follows:

\* **"construction"** means the process of building, altering, repairing, maintaining, improving, or demolishing a public highway, structure, building, or other public improvement of any kind to real property other than privately owned real property leased for the use of agencies; it includes services and professional services relating to planning and design required for the construction; it does not include the routine operation of a public improvement to real property nor does it include the construction of public housing.

\* **"professional services"** means professional, technical, or consultant's services that are predominantly intellectual in character, result in the production of a report or the completion of a task, and include analysis, evaluation, prediction, planning, or recommendation.

This manual augments Department of Transportation and Public Facilities (DOT&PF) policy and procedure for "construction related" Professional Services Agreements. *Personnel in DOT&PF and other departments and/or agencies holding a Delegation of (Construction) Authority granted by the Commissioner of DOT&PF shall utilize this manual in the procurement of "construction related" professional services.* It may also be of use to other State and local agencies.

**Note:** The process for procuring professional services that are not "construction related" is governed by Sections 81 and 82 of the State Administrative Manual as published by the Division of General Services and Supply, Department of Administration.

## COMPULSORY VERSUS SUGGESTED PROCEDURES

Of primary concern is that professional services are obtained in the fairest, most expedient manner possible without violating law or regulation. Accordingly, the typeface in this manual is used to define compulsory versus suggested procedures as follows:

\* **All text in "boldface" is based on State and/or Federal law or regulation and therefore it shall be followed as written without any deviation.**

\* *All text in "italics" is DOT&PF policy and it shall be followed exactly as written - except as may be otherwise and specifically approved by the Chief Contracts Officer.*

\* Text in "regular typeface" is provided as guidance and should be followed unless a reasonable and appropriate option is chosen, documented and approved by a Contracting Officer.

## CHANGES AND COMMENTS

This manual is subject to frequent updating. If you are not routinely (at least monthly) involved with Professional Services procurement, contact your Professional Service Coordinator (PSC) before using a personal copy and confirm that your copy includes any changes. If your PSC is unavailable, contact one of the other individuals named on the cover page of this manual.

This manual provides a concise source of information for an often cumbersome task, especially for the inexperienced. Your comments and suggestions will be appreciated. *Any proposed modifications shall be submitted for approval to the DOT&PF Chief Contracts Officer through your Contracting Officer - following review by a DOT&PF Professional Services Coordinator. Changes shall be made in accordance with DPDR 10.02.010, "Procedures for Solicitation and Administration of Construction Related Professional Services Agreements".*

## HOW TO USE THIS MANUAL

All methods for obtaining professional services are described within Chapters 1 through 6. Subsequent chapters provide detailed information for particular activities.

Request for Proposals & Professional Services Agreements (RFP&PSA) files are referenced throughout the manual and they are listed alphabetically in Chapter 18. Appendix C contains 3.5-inch diskettes with the files in Microsoft Word for Windows, plus some Excel files. The file name extension indicates which software is used. Some offices may install the RFP&PSA Files on network drives.

*The RFP & PSA files are not static. They often are changed. Always check the date contained in the footer of the current file in the manual before using a copy of the file that you made at a prior time. Use the version with the most current date. Note that the forms contained in the RFP&PSA Files are subject to DOT&PF forms control policies and they shall not be modified (other than for required entries) except as may be approved in writing by the Chief Contracts Officer.*

Some files contain instructions. You are encouraged to read the files: "aa-intro" and "instruct" before you attempt to use the RFP&PSA files. The "instruct" file contains group listings of the files according to major procurement activities (e.g., "Pre-Solicitation Activities") with a brief description of each. The other instructional

files can be identified by "ins" at the beginning of the file name.

## PROCUREMENT OPTIONS

The seven procurement processes that are used for obtaining Professional services are briefly described as follows:

**1. Small Procurement (\$5,000 or less):** Minimum requirements include obtaining an adequate number of oral responses; generally, no written solicitation or standard Agreement is required. However, there must be some written authorization from the Contracting Officer and a letter, acknowledged in writing by both parties, which describes the services, period of performance and compensation is recommended.

**2. Small Procurement (\$100,000 or less) (\$25,000 or less for FAA projects):** Minimum requirement is to advertise on the DOT&PF Internet RFP Home Page. Requires use of the DOT&PF RFP&PSA Small Procurement files: "spdocs-a" (RFP), "spdocs-b" (Proposal Form), "sp-adend" (Addendum), and "spdocs-c" (Contract Award & NTP), and a standard evaluation and selection process.

**3. Competitive Sealed Proposals (no dollar limit):** Requires posting on the State of Alaska's Online Public Notice website and the DOT&PF (or respective Agency's) Procurement website, written RFP (DOT&PF Form 25A270), committee evaluation of proposals, and standard written Agreement.

**4. Emergency (no dollar limit):** Generally requires prior approval from the Commissioner of DOT&PF on Form 25D-026 (file: "waiver"), competition that is "practicable" under the circumstances, a scope that is focused on resolving the emergency conditions, and procurement reporting. In the case of a true emergency, any agency official at the site of an emergency may make a written determination of a construction related emergency and proceed with the necessary procurement, if the conditions outlined in Chapter Four exist.

**5. Limited Competition (\$100,000 limit for construction):** Requires prior approval on Form 25D-

026 (file: "waiver"), competition that is "practicable", and a written Agreement. Shall not be used for architecture, engineering or land surveying which must be performed by registered professionals.

**6. Single Source (no dollar limit):** Requires prior approval on Form 25D-026 (file: "waiver") and procurement reporting. Shall be used when only one Contractor exists or is suitable or acceptable to provide the required services.

**7. Notice to proceed (NTP) under an existing Term Contract:** (see Chapter Six for specific requirements and allowable uses).

## CAUTION SERVICES WITHOUT AN AGREEMENT

(References: AS 36.30.930, Article 12 of the Labor Agreement for the Supervisory Unit, and Article 36 of the Labor Agreement for the General Government Unit.)

**The State of Alaska, or any agency thereof, is not bound by an Agreement until it is fully executed. Any employee that authorizes a Contractor to perform services without an executed Agreement for such services could be held pecuniarily liable. Approval for compensation could be withheld or may not be possible to give. The Contractor's legal recourse could be against the employee. On Federal-Aid projects, payment for such services would be non-participating.**

*Amendments to an Agreement must be made prior to executing a Release from Agreement or before the end date for the period of performance expressed in the Agreement or any ensuing Amendments, which ever occurs first. Services performed beyond the end date of an Agreement, or not within the Agreement scope, constitute services without an Agreement.*

**Employees are reminded that the State of Alaska has no obligation or liability to defend in court an employee who has engaged in conduct beyond his/her scope of authority or which constitutes willful misconduct or gross negligence in performance of duties.**

# Chapter 1

## SMALL PROCUREMENTS (\$5,000 OR LESS)

Prior to using this procurement process, read the Introduction to this Manual.

1

### DEFINE SERVICES, SCHEDULE AND ESTIMATED PRICE

*Develop a written Statement of Services and a Price Estimate for the proposed contract (see Chapter 7 for guidance). These are the most significant tasks to be accomplished in the procurement process. **The Price Estimate must be prepared without input from any Contractor which may be later considered for the contract and prior to obtaining proposals.***

*\* If your price estimate is more than \$4,000, consider using the process in Chapter 2. A low estimate can result in loss of time, money and effort if a contract can't be awarded because the negotiated price exceeds \$5,000 or if the price cannot be later increased above \$5,000 for a necessary and warranted change in services or effort.*

2

### AUTHORITY AND FUNDING SOURCE

*Orally confirm your authority to solicit proposals.*

Identify the funding source. Is funding provided through State appropriations to your Agency, Reimbursable Services Agreement (RSA) from another agency, or by Federal participation (FHWA, FAA, other Federal Agency)? Become familiar with funding sources, amount(s) and applicable constraints. *Identify AKSAS Collocation and Ledger Codes and if a CIP Project, AKSAS Project Number.*

Ascertain if there are any requirements for coordination with funding agency(s), e.g., if an RSA, does the granting agency need to be involved in the procurement process? **If FHWA Planning or Research (HPR, PL or PR) funding, you must have FHWA's prior, written approval of services. If an FAA project, orally check with FAA before proceeding, as FAA concurrence will be required after contract negotiations and prior to award.**

3

### OBTAIN PROPOSALS

Oral solicitation is sufficient. **Use adequate and reasonable procedures.** *If proposals are easy to obtain and require only minimal amounts of time and effort, then three proposals would be reasonable. However, as the value of the time and effort spent in obtaining proposals begins to approach (or exceed) the value of the ensuing contract, then soliciting for three proposals may become overly zealous (i.e., unreasonable) and not warranted. Contracts of a lower*

*dollar value require less solicitation effort than those approaching the \$5,000 plateau.*

When contracting in the amount of \$5,000 or less for additional professional services that expand upon or modify work products provided by a particular firm or individual, it may not be practical or reasonable to require other Contractors to compete with the original provider.

\* Caution: Direct negotiation with an original provider would be valid only if compelling reasons exist: e.g., modifications to work products must be certified by the registered engineer who prepared the originals, or the cost to familiarize another Contractor with the original work products might exceed the value of the changes required. Regardless, multiple Small Procurement awards in this fashion to the same Contractor would be in violation of law. (A Single Source procurement might be appropriate.)

*The choice of which Contractors to "solicit" is unrestricted; however, if there are many qualified Contractors for the type of services required, do not always choose the same firms for each solicitation you may do. You may select from the telephone directory or whatever source you have available.*

**Small Procurements generally requires price (adjusted by applicable "Alaska bidder or product" preferences) to be a selection factor. But, the statute covering Competitive Sealed Proposals (AS 36.30.270) exempts Offerors from submitting competitive price proposals when Architecture, Engineering and Land Surveying (A/E and LS) must be performed by a registered professional. Thus, solicitations for "licensed" A/E or LS services need not include price as a selection factor. Use your best judgement. A very specific Statement of Services is needed for A/E or LS price proposals (not "bids") and if they are obtained, they are best evaluated by a registered professional.**

\* **Note: FAA will not participate in contracts whenever costs (total costs, hourly rates, man-hour estimates, etc.) are a selection factor - reference 49 CFR 18.36(t).**

*Keep a record (handwritten acceptable) of all your discussions with Contractors to ensure that each receives the same information and that you obtain required information from each Contractor.*

**4****EVALUATE PROPOSALS**

Select the Contractor offering the proposal most advantageous to the State, not necessarily the lowest offer.

**5****TECHNICAL AND PRICE ANALYSIS**

Generally review the selected Contractor's proposal to ensure it addresses all required services and that the price is fair and reasonable only for necessary labor effort and related expenses.

**Individuals and firms without current Alaska licenses for the services they propose (business, occupational or corporate) will not be used for the contract (see file: "psa-e").**

**6****NEGOTIATION**

Negotiate final statement of services, price and method of payment with Contractor.

**7****SUMMARY OF SELECTION AND NEGOTIATION**

**2 AAC 12.400(a) requires records to facilitate auditing of Small Procurements.** The file: "rons" or another document that contains similar information may be used for this record.

**8****WRITTEN CONTRACT**

**Generally, no written solicitation or standard Agreement is required. However, there must be some written authorization from the Contracting Officer and a letter, acknowledged in writing by both parties, which describes the services, period of performance and compensation is recommended.**

**9****ISSUE NOTICE OF AWARD**

In writing or by fax or other electronic means, notify each Offeror of the Contractor to which the Award was

made.

**10****PROTESTS AND APPEALS**

*If there are any protests, see Chapter 10.*

**11****PROCUREMENT RECORDS**

The following documents must be kept in project files:

- \* **Records to facilitate auditing of the procurement.**
- \* *Contracting Officer's written approval.*
- \* *Coded invoice approved for payment.*

**12****ENCUMBER FUNDS**

Funds do not have to be encumbered; however, you may do so if the small dollar value of this contract may significantly affect the project budget (see file: "Encumber" and Chapter 14).

**13****CONTRACT MANAGEMENT**

*Give Contractor oral or written authorization to proceed with work.*

*The Project Manager may negotiate and orally direct changes in scope, schedule and price without any written documentation, except for acknowledgment of changes in price and completion date on the appropriate invoices - **except that no such changes shall cause the price to exceed the \$5,000 Small Procurement limit for the process described in this Chapter.***

*When billing is received, and after work has been accepted, send coded and approved invoice to Finance section for payment.*

NOTE: Since these invoices will not be submitted on the usual NTP/Invoice forms used for PSA exceeding \$5,000, the Project Manager may be required by the servicing financing section to provide the certifying statement which appears on the NTP/Invoice forms, before an invoice is paid.

## Chapter 2

# SMALL PROCUREMENTS (> \$5,000 ≤ \$100,000)\*

(\* FAA Small Procurement Limit is \$25,000. For FAA Projects, all references to \$100,000 should read \$25,000.)

Prior to using this procurement process, read the Introduction to this Manual.

1

### DEFINE SERVICES, SCHEDULE AND ESTIMATED PRICE

*Develop a written Statement of Services and a Price Estimate for the proposed contract (see Chapter 7 for guidance). These are the most significant tasks to be accomplished in the procurement process. **The Price Estimate must be prepared without input from any Contractor, which may be later considered for the contract and prior to obtaining proposals.***

*\* If your price estimate is more than \$80,000 (or \$20,000 if FAA funded), consider using the process in Chapter 3. A low estimate can result in loss of time, money and effort if a contract can't be awarded because the negotiated price exceeds \$100,000 (\$25,000 if FAA funded) or if the price cannot be later increased above the Small Procurement limit for a necessary and warranted change in services or effort.*

2

### AUTHORITY AND FUNDING SOURCE

*Orally confirm your authority to solicit proposals.*

Identify the funding source. Is funding provided through State appropriations to your Agency, Reimbursable Services Agreement (RSA) from another agency, or by Federal participation (FHWA, FAA, other Federal Agency)? Become familiar with funding sources, amount(s) and applicable constraints. *Identify AKSAS Collocation and Ledger Codes and if a CIP Project, AKSAS Project Number.*

Ascertain if there are any requirements for coordination with funding agency(s), e.g., if an RSA, does the granting agency need to be involved in the procurement process? **If FHWA Planning or Research (HPR, PL or PR) funding, you must have FHWA's prior, written approval of services. If an FAA project, orally check with FAA before proceeding, as FAA concurrence will be required after contract negotiations and prior to award.**

3

### OBTAIN PROPOSALS

*All Small Procurement Requests for Proposals (RFPs) will be advertised on the DOT&PF Internet Home Page.*

*Access for posting to the DOT&PF RFP Home Page is restricted to the Department's Professional Services Coordinators (named on the cover of this Manual). They will assign a unique RFP/PSA Number to your*

*RFP when posting it. Contact one of them to add your RFP to the listings.*

Ask your coordinator for a printout of the RFP Home Page Introduction -- or for the Internet address so that you may obtain it yourself. Become familiar with the introduction and in particular the requirements for Addenda and Submittals. Examine the contents to ensure that the RFP Home Page does not conflict with requirements in this Manual or your particular RFP. Discuss any problems/questions with your Professional Services Coordinator.

Public Notice may also be advertised in newspapers of local circulation where the services may be performed or be given directly to potential Offerors known to be qualified for the services required.

*Generally, the Public Notice should be posted to the Internet at least five days - but no less than three days - prior to the date proposals are due.* For contracts approaching the maximum Small Procurement Limit, more than a five day notice should be considered. The notice will provide a brief description of the services required, deadline for proposals, and information as to how the RFP may be obtained by electronic media, or in person.

**If FHWA or FAA funding, at least one certified Disadvantaged Business Enterprise (DBE) - if a DBE is reasonably available and certified by DOT&PF for the required work - must be solicited directly for a proposal.** The DOT&PF Civil Rights Office (telephone 269-0851) publishes a directory of Certified Disadvantaged Business Enterprises which can be used to identify DBEs. The directory can be found on the internet at <http://www.dot.state.ak.us/>.

Small Procurement Request for Proposals (RFPs) may be obtained by electronic media or in person at the Contracting Agency's offices. The Contracting Agency is not obligated to mail or use other "hard copy" delivery services for Small Procurements.

*Use the Small Procurement document files: "spdocs-a" (RFP), "spdocs-b" (Proposal Form), "sp-adend" (Addendum), and "spdocs-c" (Contract Award & NTP). These documents are designed for electronic transmission and an expedited contract Award.*

\* The Small Procurement RFP (file: "spdocs-a") has provisions for an optional evaluation criterion (#5). A geographic location preference or another criterion of your choosing might be used.

**Price is generally required to be a selection factor for Small Procurements. But, the statute (AS**



**36.30.270) for the major procurement process addressed in Chapter 3 of this Manual - Competitive Sealed Proposals - exempts Architects, Engineers and Land Surveyors (A/E and LS) from submitting price proposals during selection for services that must be performed by a registered professional, except under very limited conditions.** (Read about "Price Competition" in paragraph 9 under NOTICES in Part A of the Competitive Sealed Proposals RFP Package, file: "rfp-a"). Consequently, price competition will not be used in Small Procurement for A/E and LS services without prior written approval of a Contracting Officer. If price proposals (not "bids") are obtained during selection for A/E and LS services, they will be evaluated by a registered professional.

**\* FAA will not participate in contracts whenever costs (total costs, hourly rates, man-hour estimates, etc.) are a selection factor - reference 49 CFR 18.36(t).**

Since we are now using the Internet to advertise all Small Procurement RFPs exceeding \$5,000, maintaining a list of RFP recipients (for Small Procurements) is not required. All changes to an RFP will be announced by a consecutively numbered Addendum for each RFP. Contact one of the Department's Professional Services Coordinators to post the Addendum to the Internet.

\* Procedures for Addenda and also for Offeror's Submittals are described in the Introduction to the Internet RFP Home Page and in the Small Procurement RFP files. Do not assume any responsibility for assuring that any Offeror's proposal will be timely delivered.

#### 4

### EVALUATE PROPOSALS

The Evaluator (Contract Manager or other person conducting the Small Procurement) will read all proposals received.

For all contracts, the Evaluator will select three of the Offerors that are among the best qualified to provide the services required. If less than three Offerors are selected - clearly not the desired case - the Evaluator will include a detailed, objective, written explanation in the Evaluation Report (discussed below).

If the Evaluator is not generally familiar with an Offerors' or a proposed Subcontractors' prior work experience and performance, the Evaluator will informally investigate experience and credentials, performance for similar projects, available written evaluations, and may contact persons knowledgeable of an Offeror's or a Subcontractor's responsibility. Factors such as overall experience relative to the proposed contract, quality of work, control of cost, and ability to meet schedules may be addressed.

An Evaluation Report (memorandum addressed to the Professional Services Coordinator) must be prepared by the Evaluator for all Small Procurements that may exceed \$5,000. The report will summarize evaluation activities and shall identify the 3 Offerors from which the selection would be made, any of which would be suitable for performance of the contract. The Evaluation Report shall include factual information, both positive and negative, gleaned from all proposals received for use by the Contracting Officer as a summary of the proposals. In unusual situations where three Offerors are not recommended, the Evaluation Report will provide an explanation.

The Professional Services Coordinator will review the proposals and Evaluation Report. If any discrepancies are identified, they will be appropriately addressed with any action taken documented with a written explanation for the procurement file.

The Professional Services Coordinator will provide the names of the three qualified Offerors and copies of their proposals - including the Evaluation Report - to the Contracting Officer who will select one Offeror for contract negotiation. The Contracting Officer will use discretion in selecting the Offeror most advantageous to the Purchasing Agency and in the best interests of the state. Additional information which the Contracting Officer deems necessary to make a decision, will be obtained only through the Professional Services Coordinator.

#### 5

### TECHNICAL AND PRICE ANALYSIS

Obtain a price proposal from the selected Contractor if price was not a selection factor. Perform a technical and cost or price analysis (see Chapter 8) of the proposal and then develop negotiation objectives.

Insurance requirements may be waived as appropriate, if the conditions described in page 2, of the file: "psa-d" are applicable.

Individuals and firms without current Alaska licenses for the services they propose (business, occupational or corporate) will not be used for the contract (see file: "psa-e").

#### 6

### NEGOTIATION

Negotiate final statement of services, price and method of payment with Contractor (see Chapter 9).

The file: "rons" or another document that contains similar information may be used for this record.

## SUMMARY OF SELECTION AND NEGOTIATION

**2 AAC 12.400(d)** requires a summary of the responses (proposals received) and a justification for the award signed by the Contracting Officer.

## WRITTEN CONTRACT

Use the file "spdocs-c," and complete it as indicated.

Transmit a complete set of contract records per the file: "clst-sp," to your Professional Services Coordinator. Keep a copy of all materials for your project files (see Chapter 13).

\* Your Professional Services Coordinator will at this time review the contract records and, if there are no deficiencies, obtain the Contracting Officer's signature on the Contract Award (and a copy of the RONS, if used). Any deficiencies will be discussed with the Contract Manager and resolved prior to forwarding for signature. The Coordinator will then obtain the Contractor's acknowledgment and signature (usually by fax) on a copy of the Contract Award.

The Coordinator will provide a copy of the final Contract Award with all signatures to the Agency's Contract Manager for project files and keep all the other documents for the "official" procurement records required by statute and regulations.

## ISSUE NOTICE OF AWARD

As soon as possible after Contracting Officer signs spdocs-c, request that your Professional Services

Coordinator notify each Offeror which firm has been awarded the Contract. Notice of Award may be issued in writing or by fax or other electronic means.

## PROTESTS AND APPEALS

If there are any protests, see Chapter 10.

## PROCUREMENT RECORDS

Assemble copies of the following items as required by 2 AAC 12.400(d):

- \* Public Notice (e.g., screen print of Internet posting)
- \* Copies of all responses (proposals received).
- \* RONS
  - or
  - \* a written summary of all proposals.
  - \* a written justification for the award.
- \* A list of RFP recipients is NOT required since we use the Internet for Public Notice and distribution of Small Procurement RFPs.

## ENCUMBER FUNDS

Funds for the contract must be encumbered (see file: "encumber" and Chapter 14).

## CONTRACT MANAGEMENT

Provide a signed copy of the PSA to the Contractor and manage the contract (Chapter 15).

## Chapter 3

# COMPETITIVE SEALED PROPOSALS

Prior to using this procurement process, read the Introduction to this Manual.

*The "one step" solicitation/proposal process described in this chapter is generally used for obtaining Professional Services over \$100,000 (\$25,000 for FAA projects). You may consider using the "Multi-step Sealed Proposals" process described in AS 36.30.265 to first obtain various conceptual or technical offers; or, if you plan a Design-Build project, obtain prior approval of the Commissioner in accordance with AS 36.30.200(c). "Multi-step" procurements generally follow the procedures in this Chapter; however they must be carefully crafted and specifically prepared for each contract.*

### THE RFP&PSA FILE: "ACT-CLST" IS A TWO-PAGE CHECKLIST FOR THIS CHAPTER. YOU MAY WANT TO PRINT AND USE A COPY OF THE FILE FOR EACH PROCUREMENT.

1

#### DEFINE SERVICES, SCHEDULE AND ESTIMATED PRICE (see Chapter 7)

**Develop a written Statement of Services and a Price Estimate for the proposed contract** (see Chapter 7 and the files: "ins-sos" and "ins-est" for guidance). These are the most significant tasks to be accomplished in the procurement process. **The Price Estimate must be prepared without input from any Contractor which may be later considered for the contract and prior to obtaining proposals.**

2

#### AUTHORITY AND FUNDING SOURCE

***Investigate your need for the services and authority to solicit proposals for a Professional Services Agreement.*** Determine the following:

\* Are qualified personnel available within your agency? If not, can another agency complete the work? If so, a Reimbursable Service Agreement (RSA) may be the "contract" process.

\* Identify the funding source. Is funding provided through State appropriations to your Agency, Reimbursable Services Agreement (RSA) from another agency, or by Federal participation (FHWA, FAA, other Federal Agency)? Become familiar with funding sources, amount(s) and applicable constraints. ***Identify AKSAS Collocation and Ledger Codes and if a CIP Project, AKSAS Project Number.***

\* Ascertain if there are any requirements for coordination with funding agency(s), e.g., if an RSA, does the granting agency need to be involved in the procurement process? **If FHWA Planning or Research (HPR, PL or PR) funding, you must have FHWA's prior, written approval of services. If an FAA project, orally check with FAA before proceeding, as FAA concurrence will be required after contract negotiations and prior to award.**

**If you desire to shorten the advertising period, you must first obtain written approval from the Contracting Officer. If you wish to modify any**

**other aspect (emergency/single source), you must first obtain written approval from the Commissioner of DOT&PF or his designee using the Waiver Request for Construction Related Procurement Form 25D-026 (file: "waiver"). Follow the Waiver instructions in Appendix A of this Manual.**

**Evaluation committees shall consist of at least three state employees or public officials. If the procurement is for Architecture, Engineering or Land Surveying, a majority of the committee must be state employees well qualified in Architecture, Engineering or Land Surveying, as appropriate. If price is an evaluation criterion, a majority of the committee must be registered.**

*Identity of the Evaluation Committee members shall not be made public information prior to Intent to Award.*

*Prepare and obtain Contracting Officer's signature on an Authority to Seek Professional Services (file: "asps"). Follow instructions with the form and answer all questions briefly but precisely.*

3

#### OBTAIN PROPOSALS

***Prepare a Request for Proposal (RFP) Package. The file: "ins-rfp" contains assembly instructions for the RFP Package.***

\* Note: The RFP Package was developed to conform with Alaska Statutes and Administrative Code. ***The Assembly Instructions for preparation of the RFP package must be followed to the letter. Any changes to the text of the forms shall be submitted for approval to the DOT&PF Chief Contracts Officer through your Contracting Officer - following review by a DOT&PF Professional Services Coordinator. Some changes may require a written waiver from the Commissioner of DOT&PF prior to issuance of the RFP.***

***All Requests for Proposals (RFPs) will be advertised on the DOT&PF Internet Home Page.***

*Access for posting to the DOT&PF RFP Home Page is restricted to the Department's Professional Services Coordinators (named on the cover of this Manual). They will assign a unique RFP/PSA Number to your RFP when posting it. Contact one of them to add your RFP to the listings.*

Ask your coordinator for a printout of the RFP Home Page Introduction -- or for the Internet address so that you may obtain it yourself. Become familiar with the introduction and in particular the requirements for Addenda and Submittals. Examine the contents to ensure that the RFP Home Page does not conflict with requirements in this Manual or your particular RFP. Discuss any problems/questions with your Professional Services Coordinator.

**AS 36.30.130 requires that public notice must appear in the State's Online Public Notices. In addition to posting on the State's Online Public Notice, a Departmental Public Notice soliciting proposals shall be posted on the Department's (or respective Agency's) procurement web site. In the absence of an Agency web site, one or more of the five posting requirements listed in 2 AAC 12.130(a) must be used.**

*For DOT&PF solicitations, newspaper advertisement is not required and is not used unless the DOT&PF Chief Contracts Officer has given prior approval.*

**The first notice must be published at least 21 days before the date for submission of proposals.**

**The file: "adver" contains all requirements to be included in the notice.** Format and type of notice (e.g. legal or display advertisement) is your choice. Remember that the point of advertising is to gather a wide variety of proposals in order to increase agency choices and improve the quality of services obtained.

*Obtain a copy of the online advertisement as it appeared on the web site or a completed Affidavit of Publication (Form 02-901) as proof of public notice.*

**Each respondent to the solicitation shall be issued an RFP Package. If the proposed Agreement involves federal funds, solicitations will not exclude or restrict proposals from out-of-state Contractors. However, such Contractors must comply with Alaska laws and regulations regarding business, occupational, corporate, and other licensing requirements.**

Currently, RFP documents for Competitive Sealed Proposals will not be distributed electronically; however, Internet capabilities are being investigated.

**Maintain a record of RFP holders to be used if any addenda must be issued. Mark the envelope of each submittal as received with date, time and initials of recipient. Maintain a Register of Proposals listing the name and address of all respondents.**

*When inquiries from Contractors are received it is important that they are all told the same thing regarding the RFP. Ensure that discussion with Contractors does not result in any unfair advantage or premature commitment. Answers to any substantive questions must be provided in writing to all RFP holders of record. If changes are required to the RFP Package during the solicitation period, prepare and issue consecutively numbered and dated addendum (file: "addendum"). Use Night Letters/Telegrams, or Certified/Courier Mail or FAX to distribute to all registered holders of the RFP package. (If FAX is used, include a statement for acknowledgment of receipt on the FAX transmittal and request a return FAX.) Ensure sufficient time between Contractor's receipt of Addendum and the Submittal Deadline -- such that Offerors have an appropriate amount of time to respond (generally at least 48 hours); extend the deadline if necessary.*

**Ensure that proposals are not opened until after the submittal deadline and that when opened, the process avoids disclosure of contents to competing respondents during the negotiation process and until after a Notice of Intent to Award (not Intent to Negotiate) is issued.**

*Within DOT&PF an informational copy of all RFP Packages must be provided to the regional Plans Room. The Plans Room should also be advised of the date the RFP was first advertised. If requested by a Contract Manager, the Plans Room will handle reproduction and distribution of RFPs and Addenda to Contractors. On the day following the Submittal Deadline, the Plans Room will provide a log that lists the name, address, contact person and telephone number for each Contractor who received a copy of the RFP Package and any Addenda. DOT&PF Systems and headquarters sections and other departments and agencies shall establish similar, written procedures.*

Hint: If an out-of-town/state firm complains that it cannot meet a deadline, suggest that they may electronically transmit their proposal to a personal representative who may reproduce a hard copy of it and deliver it "in person" to the submittal address prior to the deadline. Do not assume any responsibility for assuring that any Offeror's proposal will be timely delivered.

*If proposal is received after submittal deadline, keep unopened in the procurement file until time for filing a protest has expired. After the protest period has ended, open the proposal package and retain one copy of the proposal per 36.30.510(2). All other copies of the non-responsive proposal may be returned.*

#### 4

#### EVALUATE PROPOSALS

The Evaluation Instructions for Chairperson (file: "ins-char") and the Evaluation Instructions for Committee

(file: "ins-comm") contain step by step procedures for the evaluation and scoring of proposals received. This is the most critical phase of the procurement process and the one most vulnerable to error and Contractor protest. Strict adherence to the procedure is necessary to maintain an equitable and consistent selection process.

**5**

**CONTRACTOR SELECTED FOR  
NEGOTIATION**

Issue a Notice of Intent to Negotiate (file: "itn") the proposed agreement, signed by a Contracting Officer or written designee, to all respondents to the solicitation. *The ranking of Offerors must be held confidential until after the Intent to Negotiate is signed.*

**\* Note: All proposals and related information must be held confidential until after the Notice of Intent to Award is issued (AS 36.30.230). Offerors requesting a debriefing shall not be allowed to review competitors proposals - and thereby provide a possible negotiation advantage - until after a Notice of Intent to Award (Activity #9) is completed.**

**6**

**AUDIT OF CONTRACTOR'S RECORDS**

For FAA agreements, the Contractor should be prepared to validate the overhead costs with a certified statement from the sponsor's auditor, state's auditor, or consultant's accountant. If the consulting firm has been audited by an agency of the Federal Government within the previous 12 months, the overhead rate determined by this audit may be used.

**The three primary purposes of pre-negotiation audits are:**

**\* Assure that the Contractor has, and uses, an acceptable accounting system that provides adequate and proper justification for price proposals and contract billings.**

**\* Assist Agency negotiators to establish fair and reasonable labor rates, Indirect Cost Rate (IDCR), equipment rates and unit prices; with adequate and proper justification.**

**\* Assure that the Contractor is aware of cost eligibility and documentation requirements.**

**PSA VALUED BETWEEN THE SMALL  
PROCUREMENT LIMITS AND \$250,000**

*For contracts or subcontracts valued between the small procurement limits and \$250,000, pre-negotiation audits are not required, if all four of the following conditions are met.*

*1) A reliable Price Estimate is prepared or obtained prior to any discussions with any Contractor who may perform work under the contract.*

*2) The Price Estimate accurately establishes a fair and reasonable value of the services required -- regardless of who might perform the contract. Further, the Price Estimate must include a complete explanation of how it was derived and provide (or reference) factual, historical or other data which support the labor rates, unit prices, profit determinations, etc. as utilized in the estimate.*

*3) Price Analysis (see Chapter 8, Sec. 8.5.1) is used to establish the Contract Price.*

*4) Method of Payment (see Chapter 8) is a form of:*

**FIXED PRICE (FP)**

*and the contract price is in reasonable agreement with the agency's Price Estimate.*

**OR**

**COST REIMBURSEMENT (CR)**

*and the maximum amount payable under the contract reasonably agrees with the Price Estimate and all of the following:*

*a) The DOT&PF Internal Review Section has issued an audit report for the Contractor that is current (within the last two years) - OR the Contractor provides a certified statement from an independent CPA - attesting to the sufficiency of the Contractor's accounting system to reliably accumulate costs for individual contracts and includes an audit of the Indirect Cost Rate.*

*b) The Contractor certifies that no significant changes were made in the accounting system since the DOT&PF or independent CPA audit.*

*c) The contract contains provisions which cap the Contractor's total hourly billing rates (Direct Labor Cost + Indirect Cost + Fee) to approximately the Direct Labor Rates paid to state employees for similar work times a reasonable multiplier for Indirect Cost and Fee, or to market labor rates that are based on identified, reliable and factual, historical or other data.*

**\* Note:** A "reasonable" multiplier might be 2.8, wherein the IDCR is 150% and the Fee is 12%. A more appropriate multiplier for the specific type of services required might be available from the DOT&PF auditors based on analysis of data derived from recent contractor audits and other pertinent sources.

*d) The contract shall contain a fixed price or a "not to exceed price" of \$250,000 or less. If any amendment will cause the price to exceed \$250,000, the DOT&PF office of Internal Review should be consulted for audit recommendations prior to executing the amendment.*

*If any of the above conditions are not met for contracts or subcontracts valued between the Small Procurement Limits and \$250,000, then a Cost Analysis (in lieu of Price Analysis) of the Contractors'*

and Subcontractors' Price Proposals is required. Internal Review should be consulted for audit recommendations prior to Contract Price negotiations.

### PSA VALUED AT MORE THAN \$250,000

**A pre-negotiation audit review of Contractors' and Subcontractors' accounting systems and business records are required for all contracts and subcontracts that may exceed \$250,000.** Immediately following identification of a Contractor or Subcontractor requiring an audit review, orally notify the DOT&PF Regional Office of Internal Review. If they do not have a current audit on file, insure that the "Pre-negotiation Requirements" Letter (file: "preneg"), as discussed under activity #7 below, includes the request for a completed Pre-Audit Statement (file: "preaudit") from the Offeror and each Subcontractor whose price may exceed \$250,000.

\* Note: The RFP Package contains a notice to Offerors which allows for disqualifying an Offeror which does not provide the Pre-Audit Statements in a timely manner.

If an audit review is required, submit a Pre-Negotiation Audit Request (file: "auditreq") to the Regional Internal Review Office. Attach a copy of the pre-solicitation Price Estimate for the contract and copies of the Contractor and Subcontractors' completed Pre-Audit Statements. If currently not available indicate a date when each will be provided to Internal Review.

\* **Note: Completed Pre-Audit Statements and attachments are proprietary information (AS 36.30.230) and are confidential. Originals must be transmitted directly to Internal Review and no copies shall be made.**

Following receipt of completed Pre-Audit Statements, the pre-solicitation Price Estimate, and Price Proposals (if any), Internal Review staff will conduct a limited review process and, if possible, quickly determine an Indirect Cost Rate (IDCR) for each Contractor and Subcontractor. If the limited review does not allow for determination of an IDCR, an "on-site" audit of the Contractor's/Subcontractor's accounting system and business records may be necessary. Because an on-site audit may take over three weeks to complete, it is important to notify Internal Review as soon as the Contractor and Subcontractors are identified. *In any case, services and labor hour negotiations may proceed and Price Proposals may be obtained prior to or concurrently with audit activities. Cost and price discussions, however, must be delayed until an audit recommendation is provided.*

\* **Note: When a pre-negotiation audit is required, no contract shall be executed prior to completion of the audit and consideration of all applicable audit findings - except with express written acknowledgment of the Contracting Officer.**

## 7

### TECHNICAL AND PRICE OR COST ANALYSIS

*Issue a Pre-negotiation Requirements Letter (file: "preneg") to the selected Contractor. Obtain and check validity of the Contractor's responses before proceeding with price negotiations. This is to ensure that the Contractor and Subcontractors are "responsible" per AS 36.30.360.*

Review all proposals received. Extract any information that may be used to improve upon the Statement of Services distributed with the RFP package. Revise the Statement of Services accordingly. *Discuss the services required with the selected Contractor to ensure a common understanding of goals and then obtain a detailed price proposal.*

**Perform a Technical and Price or Cost Analysis of the price proposal in accordance with Chapter 8. A Cost Analysis is required if the price will exceed \$250,000. Establish negotiation objectives for Direct Cost of Direct Labor, Indirect Costs, Other Direct Costs (Reimbursable Expenses and Subcontracts) and Fee.**

## 8

### NEGOTIATION

**Negotiate services, schedule, price and method(s) of payment in accordance with Chapter 9.**

## 9

### NOTICE OF INTENT TO AWARD

Following the conclusion of negotiations and selection of a Contractor, a Notice of Intent to Award (file: "ita") shall be sent to all respondents to the RFP. The Notice must be issued at least five days prior to execution of the Agreement (AS 36.30.365).

\* **Caution: Respondents have ten days following issue of Notice of Intent to Award to file any protest (AS 36.30.565), thus it may be best to delay award for ten days after the notice.**

\* **NOTE:** If unsuccessful Offerors request a debriefing, the Evaluation Committee Chairperson should informally meet with the Offeror. Discussion should focus on areas judged to be weak or deficient and on whether the weaknesses or deficiencies were factors in the Offeror not having been selected. It is not appropriate to compare unsuccessful Offeror's proposals with that of the successful Offeror except in a general way. A point-by-point comparison, no matter how objective, will invariably lead to disagreement. An adequate debriefing, however, can provide the basis for firms to improve future proposals and interviews. The debriefing is an indication that the selection process was handled fairly, equitably and in accordance with applicable laws and regulations governing the solicitation.

After the Notice of Intent to Award, all proposals and Agency files (except for agreed upon specific proprietary information) are public information.

## **10 PROTESTS AND APPEALS**

If there are any protests, see Chapter 10.

## **11 SUMMARY OF SELECTION AND NEGOTIATION**

(See the file: "rons" and Chapter 11.)

## **12 WRITTEN CONTRACT**

The standard written Professional Services Agreement is required (see the file: "ins-psa" and Chapter 12).

## **13 PROCUREMENT RECORDS**

*After RONS and PSA are prepared, assemble and transmit a complete set of procurement documents as instructed by the Documents Checklist -- Competitive Sealed Proposals (file: "clst-csp") to your Professional Services Coordinator. Keep a copy of all materials for your project files (see Chapter 13).*

\* Your Professional Services Coordinator will at this

*time review the contract records to identify any necessary revisions that must be made. In general, the Contractor must sign two copies of the PSA first. The Coordinator will then obtain a Contracting Officer's signature on both copies of the PSA and a copy of the RONS. One of the originally signed copies of the PSA will be returned to the Agency's Contract Manager to reproduce for project files and to transmit to the Contractor with a Notice to Proceed in accordance with Chapter 15. The Coordinator will keep all the other documents for the "official" procurement records required by statute and regulations.*

## **14 ENCUMBER FUNDS**

*Funds for the contract must be encumbered (see file: "encumber" and Chapter 14).*

## **15 CONTRACT MANAGEMENT**

*Provide one originally signed copy of the PSA to the Contractor and manage the contract in accordance with Chapter 15.*

# Chapter 4

## EMERGENCY PROCUREMENTS

This Chapter is for construction related professional services as defined by AS 36.30.990(6) & (17) - as quoted on page I-1 of the Introduction to this Manual. Emergency Procurement of other construction related services, commodities or construction must be done in accordance with other applicable DOT&PF procedures. Further, all Emergency Procurements not within the purview of "construction" as defined in AS 36.30.990(6), shall be made in accordance with the Alaska Administrative Manual, specifically section 81.070.

### 1

#### DEFINE SERVICES, SCHEDULE AND ESTIMATED PRICE

*Identify the type of services and time frame in which needed. Emergency Procurements may be made when there exists a threat to public health, welfare, or safety, when a situation exists that makes a procurement through competitive sealed bidding or competitive sealed proposals impracticable or contrary to the public interest, or to protect public or private property. **Only those services necessary to relieve an emergency situation shall be obtained by Emergency Procurement.** Other professional services for repair, construction, etc., shall be obtained under routine procurement procedures.*

### 2

#### AUTHORITY AND FUNDING SOURCE

*A written Determination of Emergency is required. In general, only the Commissioner of DOT&PF will make a written determination of a construction-related emergency. However, any Agency official at the site of an emergency can (and is encouraged to) make the written determination if the following conditions are true:*

- \* the official believes emergency circumstances exist,
- \* those circumstances could result in loss of life or property damage, and
- \* action to resolve the emergency must begin in less than 72 hours.

Emergencies frequently exist under any of the following circumstances:

- \* fire, flood, earthquake or similar natural disasters,
- \* medical emergency, riots or similar man made events,
- \* environmental accidents,
- \* equipment failure requiring timely repair; and

usually result in at least one of the following:

- \* a real threat to public health, welfare or safety,
- \* imminent loss of human life or property,
- \* essential need for a timely response.

**CAUTION:** *Emergency Procurements that occur as a result of an individual intentionally or knowingly acting or failing to act responsibly, to avoid requirements of normal procurement procedures, could result in disciplinary action per AS 36.30.930.*

**The Determination of Emergency must be made prior to obtaining any services, except when time is of the essence and the loss of life or property may be increased due to a delay - then the determination can be made up to 48 hours after the procurement.**

*Requests for a Determination of Emergency by the Commissioner (or by a Regional or System Director if cost will not exceed the Small Procurement limit - currently \$100,000) shall be submitted on DOT&PF Form 25D-026, Waiver Request for Construction Related Procurement (file: "waiver"). The form shall be completed per Appendix A of this Manual. Entries in PARTS 3 and 4 shall include sufficient details and factual evidence to ensure that an independent examination and verification of the emergency can be made. The intended level or manner of solicitation to be used in the Emergency Procurement should also be described.*

Generally, Part 5 of the waiver form (which constitutes the written Determination of Emergency) and the signature of approval will be rendered within two workdays following receipt of a waiver request with complete information. Incomplete information and weekends or holidays will increase this period. *If time is truly of the essence, local officials should consider making the written Determination of Emergency after - if time permits - an oral discussion with the Chief Contracts Officer.*

*If an agency official at the site of an emergency makes the Determination of Emergency - usually in a memorandum, then it shall latter be attached to the waiver form and only the heading information and PART 1 of the form must be completed. The memorandum should depict the nature and circumstances of the emergency, the effects if not cured, and the professional services needed. The memorandum must also report the basis for selection of the particular contractor to provide the services. (Often, the closest most available Contractor is selected because time is of the essence.)*

**Aside from the written Determination of Emergency, 2 AAC 12.450 (b) requires that, if practical, approval by the Commissioner (or a Regional or System Director if cost will not exceed the Small Procurement limit) must be obtained**



before an Emergency Procurement of \$5,000 or more is made. *Oral approval is acceptable.*

*If possible, also identify funding source(s) and AKSAS Collocation and Ledger Codes.*

### **3 OBTAIN PROPOSALS**

Emergency Procurements may be made by any reasonable means and with competition that is practicable under the circumstances, i.e., when time permits, some degree of solicitation and price competition is expected.

For Emergency Procurements that begin 72 hours after the need is identified, either Parts 3 and 4 or Part 5 (recommendations) of the waiver form will specify the solicitation process to be followed. *Solicitation may begin before the written Determination of Emergency, if prior oral approval of the solicitation method is approved by the DOT&PF Chief Contracts Officer (or a Regional or System Director if cost will not exceed the Small Procurement limit).*

### **4 EVALUATE PROPOSALS**

Select the Contractor offering the proposal most advantageous to the State for resolving the emergency.

### **5 CONTRACTOR SELECTED FOR NEGOTIATION**

*Orally notify all Offerors of the Contractor selected.*

### **6 TECHNICAL AND PRICE ANALYSIS**

Generally review the selected Contractor's proposal to ensure it addresses required services and that the price is fair and reasonable only for labor effort and related expenses necessary to relieve the emergency situation.

### **7 NEGOTIATION**

Establish the services to be provided (see file: "ins-sos"), schedule for performance and a Fixed Price or other payment terms. *Obtain the Contractor's signature on a copy of the Certification for Licenses & Insurance (file: "psa-e") - a fax signature followed by a copy with original signature is acceptable.* Give Contractor oral Notice to Proceed. (Written confirmation is discussed below under Professional Services Agreement.)

### **8 PROTESTS AND APPEALS**

If there are any protests, see Chapter 10.

## **9 SUMMARY OF SELECTION AND NEGOTIATION**

Within 15 days after award of the contract, complete Part 6 of the DOT&PF waiver form that was used for the Determination of Emergency and submit it through your Professional Services Coordinator to the DOT&PF Headquarters Chief Contracts Officer.

When multiple contracts are awarded under an Emergency Procurement, information pertaining to all the contracts shall be attached to the waiver form in the format shown in Part 6.

## **10 WRITTEN CONTRACT**

Obtain a PSA Number from your Professional Services Coordinator and include it in whatever form of contract you use. (The PSA Number is used to ensure that the procurement is appropriately listed in the Agencies contract records.) If time allows, use the standard PSA forms (Chapter 12); otherwise, issue a letter to the Contractor confirming the agreed upon services, schedule and method of payment. Be sure to obtain the Contractor's signature of acceptance on the letter. When time is extremely limited, handwritten communications are acceptable.

## **11 PROCUREMENT RECORDS**

Assemble and transmit a complete set of procurement documents to your Professional Services Coordinator as instructed by the Emergency Procurement Documents Checklist (file: "clst-emr").

Keep a copy of all materials for your project files.

## **12 ENCUMBER FUNDS**

Funds for the contract must be encumbered if the contract amount exceeds \$5,000 (see file: "encumber" and Chapter 14).

## **13 CONTRACT MANAGEMENT**

(see Chapter 15). Records relating to the contract shall be retained in such a manner that all actual costs to the Contracting Agency can be easily determined.

# Chapter 5

## SINGLE SOURCE AND LIMITED COMPETITION PROCUREMENTS

Prior to using this procurement process, read the Introduction to this Manual.

1

### DEFINE SERVICES, SCHEDULE AND ESTIMATED PRICE

*Develop a written Statement of Services and a Price Estimate for the proposed contract (see Chapter 7 and the files: "ins-sos" and "ins-est" for guidance).*

2

### AUTHORITY AND FUNDING SOURCE

Determine the unique characteristics of the intended procurement. If you do not know of a Contractor qualified to perform the required services - or if you know of only one Contractor - advertise in the relevant geographical area announcing your intent to make a procurement to determine what sources are available or interested. The number and type of media advertisements and length of solicitation period (generally a few days) must be practical for the situation.

Consider advertising on the DOT&PF Home Page. Access for posting to electronic media is restricted to the Department's Professional Services Coordinators (named on the cover of this Manual). Contact one of them for assistance.

*If only one Contractor responds, choose Single Source; otherwise, choose Limited Competition.*

#### SINGLE SOURCE (AS 36.30.300 & 2 AAC 12.410)

**Only one Contractor exists or is suitable or acceptable to provide the required services.**

#### LIMITED COMPETITION (AS 36.30.305 & 2 AC 12.430)

**Competitive Sealed Bidding or Competitive Sealed Proposals is impractical or contrary to public interest. May not be used for architectural, engineering or land surveying which must be performed by a registered professional. A Single Source contract may not be awarded under this process.**

Identify the funding source. Is funding provided through State appropriations to your Agency, Reimbursable Services Agreement (RSA) from another agency, or by Federal participation (FHWA, FAA, other Federal Agency)? Become familiar with funding sources, amount(s) and applicable constraints. *Identify AKSAS Collocation and Ledger Codes and if a CIP Project, AKSAS Project Number.*

Ascertain if there are any requirements for coordination with funding agency(s), e.g., if an RSA, does the granting agency need to be involved in the procurement process? **If FHWA Planning or Research (HPR, PL or PR) funding, you must have FHWA's prior, written approval of services. If an FAA project, orally check with FAA before proceeding, as FAA concurrence will be required after contract negotiations and prior to award.**

**Obtain a procurement waiver. Fully complete Parts 1 through 4 of DOT&PF Form 25D-026, Waiver Request For Construction Related Procurement (file: "waiver"). Follow the waiver instructions in Appendix A. Obtain written approval of the waiver prior to any further activity. The justification must contain findings of fact that support by clear and convincing evidence, the need to use the selected procurement method.**

**FAA approval is required for all Single Source and Limited Competition procurements >\$5,000.**

*The Contract file must contain documentation of this approval.*

3

### OBTAIN PROPOSALS

*Obtain a Single Source proposal, or Limited Competition proposals, from the selected Contractor(s). Follow any instructions contained in Part 5 of the approved waiver.*

4

### EVALUATE PROPOSALS

If using Limited Competition, select the Contractor whose proposal is "most advantageous to the State." Make sure that price, delivery and terms are discussed equally with each potential Contractor (2 AAC 12430(c)). If only one Contractor responds to the advertisement for Limited Competition and no other sources are known; award may not be made to that Contractor without another waiver for Single Source Procurement.

5

### CONTRACTOR SELECTED FOR NEGOTIATION

*Orally notify all Offerors of Contractor selected.*

The three primary purposes of pre-negotiation audits are:

- \* **Assure that the Contractor has, and uses, an acceptable accounting system that provides adequate and proper justification for price proposals and contract billings.**
- \* **Assist Agency negotiators to establish fair and reasonable labor rates, indirect cost rates, equipment rates and unit prices; with adequate and proper justification.**
- \* **Assure that the Contractor is aware of cost eligibility and documentation requirements.**

#### **PSA VALUED BETWEEN THE SMALL PROCUREMENT LIMITS AND \$250,000**

For contracts or subcontracts valued between the small procurement limits and \$250,000, pre-negotiation audits are not required, if all four of the following conditions are met.

- 1) A reliable Price Estimate is prepared or obtained prior to any discussions with any Contractor which may perform work under the contract.
- 2) The Price Estimate accurately establishes a fair and reasonable value of the services required -- regardless of who might perform the contract. Further, the Price Estimate must include a complete explanation of how it was derived and provide (or reference) factual, historical or other data which support the labor rates, unit prices, profit determinations, etc. as utilized in the estimate.
- 3) Price Analysis (see Chapter 8, Sec. 8.5.1) is used to establish the Contract Price.
- 4) Method of Payment (see Chapter 8) is a form of:

#### **FIXED PRICE (FP)**

and the contract price is in reasonable agreement with the agency's Price Estimate.

**OR**

#### **COST REIMBURSEMENT (CR)**

and the maximum amount payable under the contract reasonably agrees with the Price Estimate and all of the following:

- a) The DOT&PF Internal Review Section has issued an audit report for the Contractor that is current (within the last two years) - OR the Contractor provides a certified statement from an independent CPA - attesting to the sufficiency of the Contractor's accounting system to reliably accumulate costs for individual contracts and includes an audit of the Contractor's Indirect Cost Rate.
- b) The Contractor certifies that no significant changes

were made in the accounting system since the DOT&PF or independent CPA audit.

c) The contract contains provisions which cap the Contractor's total hourly billing rates (Direct Labor Cost + Indirect Cost + Fee) to approximately the Direct Labor Rates paid to state employees for similar work times a reasonable multiplier for Indirect Cost and Fee, or to market labor rates that are based on identified, reliable and factual, historical or other data.

\* Note: A "reasonable" multiplier might be 2.8, wherein the IDCR is 150% and the Fee is 12%. A more appropriate multiplier for the specific type of services required might be available from the DOT&PF auditors based on analysis of data derived from recent contractor audits and other pertinent sources.

d) The contract shall contain a Fixed Price or a "not to exceed price" of \$250,000 or less. If any amendment will cause the price to exceed \$250,000, the DOT&PF office of Internal Review should be consulted for audit recommendations prior to executing the amendment.

If any of the above conditions are not met for contracts or subcontracts valued between the Small Procurement Limits and \$250,000, then a Cost Analysis (in lieu of Price Analysis) of the Contractors' and Subcontractors' Price Proposals is required. Internal Review should be consulted for audit recommendations prior to Contract Price negotiations.

#### **PSA VALUED AT MORE THAN \$250,000**

**A pre-negotiation audit review of Contractors' and Subcontractors' accounting systems and business records are required for all contracts and subcontracts that may exceed \$250,000.** Immediately following identification of a Contractor or Subcontractor requiring an audit review, orally notify the DOT&PF Regional Office of Internal Review. If they do not have a current audit on file, insure that the "Pre-negotiation Requirements" Letter (file: "preneg"), as discussed under activity #7 below, includes the request for a completed Pre-Audit Statement (file: "preaudit") from the Offeror and each Subcontractor whose price may exceed \$250,000.

If an audit review is required, submit a Pre-Negotiation Audit Request (file: "auditreq") to the Regional Internal Review Office. Attach a copy of the pre-solicitation Price Estimate for the contract and copies of the Contractor's and Subcontractors' completed Pre-Audit Statements. If currently not available indicate a date when each will be provided to Internal Review.

\* **Note: Completed Pre-Audit Statements are proprietary information (AS 36.30.230) and are confidential.** Originals must be transmitted directly to Internal Review and no copies shall be made.

Following receipt of the completed Pre-Audit Statements, the pre-solicitation Price Estimate, and Price Proposals (if any), Internal Review staff will conduct a limited review process and, if possible, quickly determine an Indirect Cost Rate (IDCR) for each Contractor and Subcontractor. If the limited review does not allow for determination of an IDCR, an "on-site" audit of the Contractor's/Subcontractor's accounting system and business records may be necessary. Because an on-site audit may take over three weeks to complete, it is important to notify Internal Review as soon as the Contractor and Subcontractors are identified. *In any case, services and labor hour negotiations may proceed and Price Proposals may be obtained prior to or concurrently with audit activities. Cost and price discussions, however, must be delayed until an audit recommendation is provided.*

\* *Note: When a pre-negotiation audit is required, no contract shall be executed prior to completion of the audit and consideration of all applicable audit findings - except with express written Acknowledgement of the Contracting Officer.*

## **7 TECHNICAL AND PRICE OR COST ANALYSIS**

*Issue a Pre-negotiation Requirements Letter (file: "Preneg") to the selected Contractor. Obtain and check validity of the Contractor's responses before proceeding with price negotiations. **This is to ensure that the Contractor and Subcontractors are "responsible" per AS 36.30.360.***

*Discuss the services required with the selected Contractor to ensure a common understanding of goals and then obtain a detailed price proposal. **Perform a Technical and Price or Cost Analysis of the price proposal in accordance with Chapter 8. A Cost Analysis is required if the price will exceed \$250,000. Establish negotiation objectives for Direct Cost of Direct Labor, Indirect Costs, Other Direct Costs (Reimbursable Expenses and Subcontracts) and Fee.***

## **8 NEGOTIATION**

**Negotiate services, schedule, price and method(s) of payment in accordance with Chapter 9.**

## **9 PROTESTS AND APPEALS**

If there are any protests, see Chapter 10.

## **10 SUMMARY OF SELECTION AND NEGOTIATION**

**(See the file: "rons" and Chapter 11.)**

*Within 15 days after award of the contract, complete Part 6 of the approved DOT&PF Form 25D-026, Waiver Request for Construction Related Procurement, and submit a copy through your Professional Services Coordinator to the Chief Contracts Officer at the address shown on the form.*

## **11 WRITTEN CONTRACT**

**The standard written Agreement is required (see the file: "ins-psa" and Chapter 12).**

## **12 PROCUREMENT RECORDS**

After the PSA is prepared, assemble and transmit a complete set of procurement documents as instructed by the Documents Checklist -- Limited Competition, and Single Source (file: "clst-lcs") to your Professional Services Coordinator. Keep a copy of all materials for your project files (see Chapter 13).

\* *Your Professional Services Coordinator will at this time review the contract records to identify any necessary revisions that must be made. In general, the Contractor must sign two copies of the PSA first. The Coordinator will then obtain a Contracting Officer's signature on both copies of the PSA. One of the originally signed copies of the PSA will be returned to the Agency's Contract Manager to reproduce for project files and to transmit to the Contractor with a Notice to Proceed in accordance with Chapter 15. The Coordinator will keep all the other documents for the "official" procurement records required by statute and regulations.*

## **13 ENCUMBER FUNDS**

Encumber funding if contract amount exceeds \$5,000 (see file: "encumber" and Chapter 14).

## **14 CONTRACT MANAGEMENT**

*Provide one originally signed copy of the PSA to the Contractor and manage the contract in accordance with Chapter 15.*

## Chapter 6

# TERM AGREEMENTS

*All Term Agreements require DOCUMENTED pre-approval from the Chief Contracts Officer using the ASPS form. The request must have the concurrence of the Regional Contracting Officer before submittal to the Chief Contracts Officer. Generally, Term Agreements will not be approved for use when Small Procurement (Cost less than \$100,000) is an option, because Term Agreements - while appropriate in some circumstances - are somewhat restrictive of full, open competition.*

### PROCUREMENT PROCESS

6.1 Generally, Term Agreements (indefinite delivery contracts) shall be awarded by Competitive Sealed Proposals (Chapter 3).

### PURPOSE

6.2 Term Agreements may be used:

6.2.1 To accomplish a small project, or task for a large project.

6.2.2 To engage a firm that is the only suitable and acceptable Contractor available to provide a particular service, as needed and timely, during a specific period, e.g., photogrammetry.

6.2.3 For other purposes approved in writing by the Chief Contracts Officer.

### CONDITIONS FOR USE

6.3 Each Term Agreement must contain a clear, specific description of the services to be provided and the specific purpose(s) for which they might be rendered. A general reference to "planning" or "electrical engineering" or "land surveying" would be insufficient. A Statement of Services which identifies only a profession rather than specific tasks to be performed or which are otherwise ambiguous is unacceptable (see file: "ins-sos"). This policy exists to encourage competitive procurement based on specific project services and thereby not unreasonably exclude any Contractors through the use of very generalized Term Agreements.

6.3.1 The Statement of Services will be prepared by the Division or Section requiring them. Assistance from the Professional Services Coordinator may be provided.

6.3.2 Each Term Agreement must be written to insure that an employer-employee relationship (reference Exhibit 6-I) will not result.

6.4 Each Term Agreement must contain detailed and specific terms and conditions for payment (see files: "ins-psa" and "c1-pay"). Term Agreements which allow for competition among Term Contractors are acceptable only if the competition is based on such factors as methods, labor effort, profit, etc. The contract must

contain unit prices or hourly labor rates (fixed total billing rate or direct labor rate plus fixed indirect cost rate) for ALL key personnel and the various job classifications that might be employed under the contract.

6.5 Subcontractors listed in a Term Agreement may be replaced in accordance with AS 36.30.115; however, no Subcontractors shall be added to a Term Agreement to perform any services not specifically identified within the original contract.

6.6 The original compensation specified in a Term Agreement shall not be increased by Amendments.

6.7 Generally, the maximum period for issuing NTPs under a Term Agreement shall not exceed five years; however, one additional year may be allowed for completion of work assigned during the initial period.

6.8 Each Term Agreement must contain procedures for authorizing work and for determining payments.

6.8.1 Every Notice to Proceed (NTP) issued under a Term Agreement will define specific services and an amount of compensation in accordance with the method(s) of payment contained in the Agreement.

6.8.2 Every Notice to Proceed issued under a Term Agreement shall be signed by the Contracting Officer (or a designee authorized in accordance with DOT&PF Policy #01.01.050).

### USE

6.9 Project Managers desiring to use existing Term Agreements must accomplish the following activities:

6.9.1 Obtain or prepare a written Statement of Services and price estimate for the proposed work.

6.9.2 Orally confirm authority to solicit proposals.

\* Identify the funding source. Is funding provided through State appropriations to your Agency, Reimbursable Services Agreement (RSA) from another agency, or by Federal participation (FHWA, FAA, other Federal Agency)? Become familiar with funding sources, amount(s) and applicable constraints. Identify AKSAS Collocation

and Ledger Codes and if a CIP Project, AKSAS Project Number.

- \* Ascertain if there are any requirements for coordination with funding agency(s), e.g., if an RSA, does the granting agency need to be involved in the procurement process? **If FHWA Planning or Research (HPR, PL or PR) funding, you must have FHWA's prior, written approval of services. If an FAA project, orally check with FAA before proceeding, as FAA concurrence will be required after contract negotiations and prior to award.**

6.9.3 Discuss the services required with the Contract Manager for the Term Agreement and determine if it may be used. If the services required fit within the services described in the contract, the Contract Manager will coordinate the selection of a particular Contractor -- if more than one firm is under contract to provide the services required. *Generally, work assignments will be made following competitive solicitation among the Term Contractors, except when:*

- \* *there is only one Term Contractor for the services;*
- \* *one Term Contractor has prior significant project involvement and/or it would be impractical to award the work to another Contractor; or*
- \* *there exists an emergency or other circumstance requiring a timely response and a particular Term Contractor is in a best position to perform the services required e.g., the Contractor already has appropriately skilled personnel working in a remote location where the services are needed.*

6.9.4 The Contract and/or Project Manager will meet with the Term Contractor to define the specific services and/or work products required, the personnel and equipment necessary and a schedule to complete the assignment. Following this meeting the Contractor will provide a written proposal for the work which must name the personnel to be assigned and includes a Statement of Services, Schedule for Completion and a detailed Price Proposal. The Contract and/or Project Manager must perform a Technical and Price (or Cost) Analysis of the proposal (see Chapter 8) and negotiate a final Statement of Services and Schedule with a Fixed Price, Time and Expenses, Cost Plus Fixed Fee or other Method of Payment, allowed by the Term Agreement.

6.9.5 *Following negotiations the Contract or the Project Manager will prepare a Record of Negotiation and Selection (file: "rons"). The Contract Manager will assign a NTP Number for the particular Term Contract and prepare the NTP/Invoice form (file: "c2-ntp"). Funding codes must be entered on the form before it is issued. After the RONS and NTP are prepared, assemble and transmit a complete set of procurement documents to your Professional Services Coordinator*

*as instructed by the Documents Checklist-NTP under Term Agreement (file: "clst-ntp").*

- \* Your Professional Services Coordinator will then review the RONS, NTP and other documents, and, if there are no deficiencies, obtain the Contracting Officer's signature. Any deficiencies will be discussed with the Term Agreement Contract Manager and resolved prior to forwarding to the Contracting Officer. The NTP, RONS and other documents will be returned to the Term Agreement Contract Manager for coordination with the using Project Manager and administration and management of the contract.

6.9.6 The Term Agreement Contract Manager will ensure that the Contractor acknowledges receipt of the NTP by signature under "NTP Accepted" on the form and returns a copy with original signature.

- \* Note: Contractor must keep the original copy of the NTP/Invoice form to make further copies for billing(s) as directed in the "Contractor's Instructions" on the form.

6.9.7 If the NTP may exceed \$5,000, the Project Manager shall ensure encumbrance of funding for the NTP (see file: "encumber" and Chapter 14).

6.9.8 *The Project Manager shall administer the work authorized by the NTP. If services or compensation of an NTP is changed, the Project Manager shall coordinate with the Term Agreement Contract Manager for issue of a new NTP to replace the original. Billings charged to the original NTP will be transferred to the new NTP. Overrun of NTP amounts will not be paid without a revised NTP. Oral authorization is not acceptable, and the Project or Term Agreement Contract Managers do not have the authority to increase NTP amounts or change the Statement of Services, without the written approval of a Contracting Officer.*

6.9.9 Project Manager will obtain invoices (monthly, if work takes longer than a month), review and make any necessary corrections, sign to recommend payment, complete the performance evaluation on each, and deliver the invoices to the Term Contract Manager for processing.

## CONTRACT RECORDS

6.10 *The Term Agreement Contract Manager is responsible for maintaining the organization's official records concerning contract administration until the Agreement is ended; after which the files will be handled in accordance with the organization's file retention policies.*

# Chapter 7

## STATEMENT OF SERVICES AND PRICE ESTIMATE

### ACTIVITY # 7

#### STATEMENT OF SERVICES

7.1 The Pre-Solicitation Statement of Services (SOS) is the Agency's internal working document that initially defines the services to be procured. It is the root from which grows the final negotiated SOS to be included in the contract. *The Pre-Solicitation SOS should describe as precisely as possible the tasks and services to be procured. It should reflect a clear, accurate description of the technical requirements for the services to be rendered.* Its significance towards the success of a project cannot be overemphasized. Yet, too often we rush to get a contract advertised and awarded.

7.1.1 The development of a poor SOS results in difficulties and delays in contract negotiations, substandard or incomplete work, schedule delays, contract amendments, increased contract price and administrative costs, and disputes between Contractor and Agency. Such results occur because the solicitation process, the estimated period of performance, the schedule of deliverables, the estimated costs and the contract method of payment are all developed in relationship to the description of services required.

\* *Note: The SOS you include later with the Request for Proposals (RFP) may be the Pre-Solicitation SOS or it may be abbreviated, depending on the extent of originality you desire in proposals. For instance, if a contract is to obtain location and design services for reconstruction of a federally funded road, you state the established procedures and fixed design parameters that must be followed to obtain design approval. Then Offerors understand the services needed and proposals should reflect the required skills and effort needed to perform the contract. However, for design of a major new bridge, the detailed Pre-solicitation SOS prepared for Agency use might be abridged to provide only general objectives of the contract in the RFP - to focus proposals on conceptual design alternatives for Agency consideration - rather than a detailed description of the required services. In the latter case, the Pre-Solicitation SOS is still required for discussion and negotiations with the selected Offeror.*

7.1.2 *Prepare a SOS that first presents a clear and concise overview that is easy to understand, then proceed into technical aspects. Provide your Agency's best definition of and schedule for the deliverable(s) required. The file: "ins-sos" contains instructions and guidance for preparing a SOS.*

7.1.3 Break the work down into manageable tasks and subtasks such that you can estimate the level of expertise and the labor effort required for each. For assistance, consult with personnel within your Agency

or other Agencies that have some background or expertise similar to that required of the Contractor.

7.1.4 If you need creative approaches and/or are unaware what services your project might entail, the resulting "task definitions" may not be very detailed or accurate. Hence you may wish to subdivide the services into general project areas such as:

- \* Development of Objectives
- \* Data Collection or Preliminary Designs
- \* Data Analysis or Final Design
- \* Presentation of Results
- \* Project Management

7.1.5 If the services are difficult to analyze because early tasks involve discovery or programming of project requirements (e.g., scoping for an environmental study or establishing client's needs for a new building), consider phased contracts. The first contract could be for scoping or programming with an Agency option to negotiate further contracts for subsequent phases with the same contractor (if appropriate) or following another competitive procurement.

\* *Note: Any intent to use phased contracting must be clearly explained in the RFP with cost ranges for the first phase contract plus the total for all phases.*

7.1.6 Professional Service Coordinators keep lists of Professional Services Agreements (PSAs) that may be reviewed to identify prior contracts covering similar projects and/or services. Wording in those contracts may be useful in developing your particular SOS.

#### PRICE ESTIMATE

7.2 *Along with the Pre-Solicitation Statement of Services, you must prepare a Pre-Solicitation Price Estimate for those Services. The Pre-Solicitation Price Estimate must be thorough enough to adequately determine the procurement process to be used, i.e., Small Procurement or Competitive Sealed Proposals. It is preferable that the Pre-Solicitation Price Estimate be as complete as possible such that little, if any, additional estimating will be required when you are later engaged in the solicitation and proposals evaluation process.*

The Pre-Solicitation Price Estimate is not the end of estimating requirements. **Prior to obtaining and opening any Offeror's Price Proposals, an INDEPENDENT Pre-Proposal estimate must be prepared. This final Price Estimate must be as thorough and detailed as if you were submitting a Price Proposal for the contract. The estimate must address labor costs, expenses, and profit.** Chapter 8 provides an extensive discussion of the components of

price which are summarized below.

### **DIRECT COST OF DIRECT LABOR**

7.2.1 The more accurately you delineate project tasks, the more precisely you can estimate the level of expertise and hours required to complete each task. From this, you may estimate the Direct Cost of Direct Labor for the project. Typically, a Contractor will provide the following personnel:

- \* Principal-in-Charge
- \* Contract Manager
- \* Project Manager
- \* Project Leader(s)
- \* Engineers, Designers, Planners or Investigators
- \* Technical Specialist(s)
- \* Computer Operators/Draftspersons
- \* Support Staff

After determining the levels of expertise which each task or general area of the project requires, estimate the time required to perform each task. Use best judgement. Whenever possible, estimate the tasks by hours rather than days. When your personal experience is limited, seek assistance from others with background or expertise similar to that required of the Contractor.

Without specific knowledge of the (base) hourly rates an Offeror may likely propose, you will have to estimate these costs. One method of roughly estimating the Contractor's costs is to consider what the State of Alaska would pay similarly qualified employees to do the required work. Exhibit 7-1, Estimating Rate Schedule for Consultants, at the end of this Chapter, may be used.

### **INDIRECT COSTS**

#### **(Fringe or "payroll" Benefits plus Overhead)**

7.2.2 Indirect Cost is calculated as a percentage of the Direct Cost of Direct Labor. Unless you have special knowledge of a likely Indirect Cost Rate (IDCR) which Offerors would propose, use 150% (low 145, high 160) for the Estimate.

### **OTHER DIRECT COSTS**

#### **(Subcontracts and Expenses)**

7.2.3 Although Direct Cost of Direct Labor are the primary direct costs incurred for Professional Services Agreements, "Other Direct Costs" may be incurred specifically for a Contract effort if they can be readily identified and charged to it. In addition to Subcontracts examples of Other Direct Costs include Expenses for:

- \* Transportation
- \* Food and Lodging
- \* Materials and Supplies
- \* Reproduction
- \* Laboratory Tests

- \* Computer Time
- \* Special Equipment: Purchase, Rental or Use

\* Note: It is possible that some of the above items may be included in an Offeror's Indirect Costs. Do not assume that possibility in your estimate. List each applicable item and its estimated cost. (Negotiations with the selected Contractor will establish how the Contractor will be compensated for such costs.)

Direct costs for Subcontracts and Expenses may vary considerably with the Contractor selected. Subcontracts and travel for example will depend heavily upon the Contractor's team strategy and the geographic office locations of the Contractor and Subcontractors. This portion of the estimate should be based upon your prediction of a "reasonable contractor strategy".

### **FEE**

#### **(including profit)**

7.2.4 A method of estimating Fee is to use the Fee Objective Worksheet (file: "feewksh"). It uses your estimated amounts for Direct Cost of Direct Labor and Other Direct Costs to calculate an appropriate Fee. Follow instructions in the Worksheet. Generally, use of the fee worksheet is not warranted for contracts less than about \$250,000. For such contracts a Fee equal to about 10% - 12% of the sum of Direct Cost of Direct Labor plus Indirect Cost could be used for an estimate.

### **SPECIAL CASES**

7.3 Occasionally you may encounter situations where labor, equipment and materials costs are so intermingled, that attempts to separate the cost data primarily on the basis of labor hours as described above may not be worth the effort. Consequently, if - after coordinating with the Audit staff - a common rate structure or other reasonable basis cannot be found to develop a reliable cost estimate for some activity, then the best approach may be to require Contractors to submit the results of separate Competitive Bids for the activity with their proposals for the entire contract.

Geotechnical drilling programs are a special case example. Because of the variables involved in drilling efforts, e.g., topographic location, soil conditions, depth, type of casings, mobilization and demobilization, etc., jobs are seldom similar and a common basis for estimating that applies to all of the potential Alaskan Contractors is a daunting task that we have not yet achieved.

### **SAMPLE ESTIMATE**

7.4 Exhibit 7-2 is an example of a Pre-Solicitation Price Estimate.



# Chapter 8

## TECHNICAL AND COST OR PRICE ANALYSIS

### ACTIVITY # 8

Contract Managers are encouraged to read this chapter carefully. Address any questions or comments to your Professional Services Coordinator. Past audits of our contracting activities suggest that improvements can be made in the areas of cost standards application, Technical Analysis, Cost Analysis and Fee determinations.

#### CHAPTER INDEX

- 8.1 Technical Analysis
- 8.2 Cost Standards
- 8.3 Price
- 8.4 Accounting Terminology
- 8.5 Cost or Price Analysis
- 8.6 Labor
- 8.7 Direct Cost of Direct Labor (DCDL)
- 8.8 Indirect Cost (IDC)
- 8.9 Other Direct Cost (ODC)
- 8.10 Fee (Profit)
- 8.11 Methods of Payment

#### TECHNICAL ANALYSIS

8.1 Technical Analysis is the review of proposed tasks, schedule, skill levels, labor effort, equipment and material to determine adequacy and appropriateness for accomplishing contract objectives. It is often intermingled with Cost Analysis.

8.1.1 A thorough Technical Analysis first makes a comparison of all received proposals against the Contracting Agency's Pre-Solicitation Statement of Services. This review may identify cost-effective methods or elements of work that were not considered by the Agency, and which should be incorporated into a revised Statement of Services.

8.1.2 Next, the content of the selected proposal should be reviewed for "completeness" to determine if the Contractor needs to resubmit all or part of the proposal. The review should also identify any unnecessary or questionable items to be addressed during negotiations. When your personal experience is limited, seek assistance from others with backgrounds or expertise similar to that of the selected Contractor.

8.1.3 Review each task to identify incomplete task descriptions or misinterpretations concerning scope and/or level of expertise and effort. Compare the Contractor's allocation of personnel and level of expertise to your labor estimate. Keep in mind, however, that the logic, by which the Contractor assigned personnel, may be different from your own. You must make objective judgments on the merits of the technical proposal. Examine the skills proposed, hours per task, subcontracts, transportation, food and lodging, computer time, equipment, specific materials and supplies, etc. Ensure that any critical milestones for contract performance are stated. Review the proposal

to determine if the Contractor has duplicated any services or items that will be provided by the Contracting Agency. Consider that "management time" may be as high as 10% of total employee time (or 1 hour of supervision per 8 hours of employee labor). Also, you might convert 10% of proposed subcontract costs for Direct Cost of Direct Labor plus Indirect Cost, to hours for the Prime Contractor's supervision.

#### COST STANDARDS

8.2 To comply with Alaska Statute (AS 36.30.480), the Alaska Administrative Code (2 AAC 12.560), and federal funding regulations, DOT&PF has adopted the contract cost principles (standards) set out in Title 48 of the Code of Federal Regulations, Part 31 (48 CFR Part 31) -- exclusive of any references in Part 31 to other parts of 48 CFR, for determining the reasonableness and allowability of contract costs. Title 48 is also known as the Federal Acquisition Regulations (FAR).

#### PRICE

8.3 "Price" is defined as:  $\text{Cost} + \text{Fee} = \text{Price}$

8.3.1 "Cost" is defined as the allowable "out of pocket" expenses a Contractor will incur in performing contract work. The term "cost" is often used when "price" is really meant.

8.3.2 "Fee" is defined as the sum of Profit plus any costs not allocable to a contract. Notice the distinction between Fee and Profit wherein the Contractor's Profit is reduced by the amount of costs not allocable to a contract.

#### ACCOUNTING TERMINOLOGY

8.4 The accounting terms described in the following paragraphs provide minimal essential information necessary to perform a Cost Analysis for Professional Services Agreements.

8.4.1 "Cost Accounting" is a procedure that enables firms to keep track of costs for individual contracts or specific tasks, and to estimate costs of future work. It is not the same as "Financial Accounting" which is the accumulation of information to determine a firm's total costs and profit for a particular period of time. Financial Accounting does not by itself identify costs and the profit or loss for particular jobs.

8.4.2 A "Cost-Reimbursement" contract requires the Contractor to have an acceptable cost accounting system to ensure that costs billed are a direct outgrowth of the costs incurred for that contract, and not mixed with costs of other work. Within DOT&PF, the acceptability of a firm's cost accounting system is established during Pre-Negotiation audits performed by Internal Review Section staff.

8.4.3 Even in the case of a "Fixed Price" contract, the Contractor should have an adequate cost accounting system to help assure that the Contractor's estimated costs used to negotiate the Fixed Price are reasonable.

8.4.4 The three major classifications for costs used in Cost Analysis are:

- \* Reasonable, Allowable, Allocable
- \* Fixed, Variable, Semi-variable
- \* Direct and Indirect

#### 8.4.5 **Reasonable, Allowable and Allocable Costs**

8.4.5.1 "Reasonable Costs" by their nature and amount do not exceed that which would be incurred by a prudent person in the conduct of a competitive business.

- \* The nature of a cost may make it unreasonable; e.g., although air travel may be appropriate, first class is normally considered to be unreasonable. The use of very high quality materials when materials meeting lesser standards would be acceptable is another example of unreasonableness due to the nature of the cost.
- \* The amount of a cost may be unreasonable, even though the nature of the cost is acceptable; e.g., the proposed cost for an item of necessary equipment may be too high.
- \* A prudent (careful) person does not spend money unnecessarily "in a competitive business," because of the prospect that customers might go to a competitor if a price is too high. However, if there is little or no competition, there is no strong incentive to save on costs, which are merely passed to customers as a part of the overall price.

8.4.5.2 "Allowable Costs" are reasonable costs of doing business. There are exceptions; e.g., the Federal Acquisition Regulations (FAR) state that charitable donations, considered by many firms to be an ordinary and necessary business expense because they believe they have an obligation to the public at large, are unallowable. There are other costs which are flatly unallowable and a considerable number of which may or may not be allowable depending on prevailing circumstances. Within DOT&PF the allowability of such costs is generally determined by an audit of the Contractor's accounting records performed by Internal Review Section Staff.

8.4.5.3 "Allocable Costs" are assignable to one or more cost objectives i.e., a proposed contract or an Amendment, on the basis of relative benefit or other equitable relationship. First, the costs have to be reasonable and allowable; then, they are allocable if:

- \* The costs are incurred specifically for the contract. Costs for labor, material and travel are examples.
- \* The costs benefit more than one contract and can be reasonably divided among them. Supervisory costs might be allocable.
- \* The costs are necessary to the overall operation of the business. This rule applies even if a direct relationship to a contract is not determined. Property taxes, rent, top level management, accounting, and personnel administration are examples.

#### 8.4.6 **Fixed, Variable and Semi-Variable Costs**

8.4.6.1 Each incurred cost may also be classified in terms of how it changes with the volume of a firm's business. For example, if a firm's work force increases, the cost of Fringe Benefits will also rise, generally in proportion to the increase in Direct Cost of Direct Labor (variable cost). Conversely, within reason, the cost of building rent, property insurance and top level supervision will remain pretty much the same regardless of work force size or the volume of business (fixed cost). Electricity is an example of a semi-variable cost because it consists of a basic charge plus a variable rate based on usage. The concepts of variable, semi-variable and fixed costs are not exact but an understanding of the general ideas may help in determining the validity of price proposals.

#### 8.4.7 **Direct Costs and Indirect Costs**

The distinction between Direct and Indirect Costs is the most important of the cost classifications to understand. Within a Contractor's accounting system, a particular cost must be considered as one or the other; not a Direct Cost part of the time and an Indirect Cost at other times.

8.4.7.1 A "Direct Cost" is any cost that can be identified specifically with and charged to a given contract, e.g., the labor cost of engineers working day-to-day on a contract are chargeable to that effort. It is fairly easy to record the time they spend on the job and convert that time to a dollar cost. Likewise, materials purchased and used for that contract can easily be charged to it. Section 8.7 addresses Direct Cost of Direct Labor and Section 8.9 addresses Other Direct Costs.

8.4.7.2 "Indirect Cost" is any cost not directly identified with or not chargeable to a single contract. Indirect Costs apply across-the-board to large parts, or all, of the work that a firm is doing. Most Indirect Costs are allocable. Supervision is usually an Indirect Cost. Utility costs are another example. Section 8.8 further addresses Indirect Costs.

## COST OR PRICE ANALYSIS

8.5 "Cost Analysis" is the element by element comparison of the Agency's estimate of costs to the Contractor's price proposal for estimated or actual costs, to determine reasonableness. The term "Cost Analysis" has come to mean the analysis of proposed costs and Fee and that is the manner in which the term is used in this handbook. Strictly speaking, the analysis of a proposed Fee - to determine if it is reasonable - would be called "Fee Analysis."

**8.5.1 A Cost Analysis is required for all contracts and subcontracts exceeding \$250,000. For contracts and subcontracts \$250,000 and less, "Price Analysis" may be used when a reliable pre-proposal Price Estimate is prepared independent of the Contractor or any Subcontractor involvement. The estimate must accurately establish a fair and reasonable value of the services required -- regardless of who might perform the contract. The estimate shall also include a complete explanation of how it was derived and provide (or reference) factual, historical or other data which support the labor rates, unit prices, Fee, etc. used in the estimate.**

8.5.2 "Price Analysis" is the process of comparing the "bottom line amounts" of the Agency's estimate and the Contractor's proposed price -- without evaluating the separate elements of costs and Fee. If the "bottom line amounts" do not significantly differ, then the Contractor's proposed price may be acceptable, thus negating a need for a Cost Analysis. Price Analysis may also be used to determine the reasonableness of specific hourly rates or unit prices when the total price for each specific service or product within a larger contract does not exceed the statutory Small Procurement limits.

\* *Note: While Price Analysis does not require specific validation of each cost element of a proposal, more scrutiny is warranted as the value of the contract approaches \$250,000. Proposed tasks, skills, skill levels, subcontracts, equipment, travel, etc. should be scanned to identify any items, rates, or prices that do not appear to be appropriate or reasonable. These should be addressed in negotiations even if the total amount of the Price Proposal compares favorably with a pre-proposal Price Estimate.*

**8.5.3 AS 36.30.400 requires Contractors to submit cost and pricing data and to certify that the data is accurate, complete and current, at the time agreement is reached on price and will continue to be accurate and complete during performance of the contract. Under the state's "Competitive Sealed Proposals" procurement method, the submission of cost and pricing data in the form of a Price Proposal is required from all Offerors except for services which must be performed by licensed Architects, Engineers or Land Surveyors (A/E or LS) as defined**

**in AS 36.30.270. When this exception for "licensed" A/E or LS is applicable, only the Offeror selected for contract negotiations must submit the cost and pricing data.**

\* *Note: If any audit discloses a "Significant Variance" between Contractor payments and Contractor incurred costs, there may exist a basis for recovery of such amounts from the Contractor (reference AS 36.30.400), regardless of the procedure used for contract award or the Method of Payment used for the contract. "Significant Variance" means that payments to a Contractor for costs (exclusive of fair and reasonable profit) exceed fifteen percent of Contractor incurred costs for:*

- \* any one contract; or
- \* the aggregate of payments for costs exclusive of fair and reasonable profit and the aggregate of incurred costs during a Contractor's fiscal year for all contracts with the Contracting Agency.

8.5.4 Sections 8.7, 8.8 and 8.9 explain how to perform a Cost Analysis for each of the principal components of cost: Direct Cost of Direct Labor, Indirect Costs and Other Direct Costs (including Subcontracts). Section 8.10 addresses Fee. When applying the techniques of Cost Analysis, it is important to remember that Price Proposals are usually based on estimates of future costs. It is unreasonable to expect anyone to estimate future costs with needle-point accuracy. The estimates are a combination of presently known information and judgments used to project expected costs from the presently known information.

8.5.5 Exhibit 8-1 is a sample Price Proposal which is used to demonstrate Cost Analysis in the following sections.

## LABOR

**8.6 Labor may be divided into direct and indirect.**

- \* **Direct Labor** is performed by people whose effort can be specifically identified with and charged to a contract. Examples include engineers, draftsmen, computer operators, laboratory technicians, etc.
- \* **Indirect Labor** may be performed by people not directly associated with a contract but whose labor supports its performance. Examples include maintenance personnel, bookkeepers, secretaries and other general and administrative personnel.

8.6.1 The allocation of labor to direct or indirect is a Contractor's choice. However, since it is possible to change total contract costs by shifting people from direct to indirect labor, or vice versa, Contractors must identify how they choose to categorize their employees. Investigating this allocation is a function of Audits. Some types of labor fit into one category or the other with very little room for argument. An engineer performing design is certainly direct labor. Conversely, the efforts of a firm

president who works on a wide variety of contracts and other tasks, is most often Indirect Cost.

8.6.2 Administration, management, general supervision, secretarial, clerical, bookkeeping and accounting are categories of labor, which can be allocated as either direct labor or indirect. Inspection is another example. Some firms assign their inspectors on a job specific basis and most of the inspector's time is spent on that job until it is finished. Other firms may have their inspectors "rove" from job to job making it very difficult to keep track of the time they spend on any particular job. Labor associated with equipment operation, travel, telephone, reproduction, subcontracts, etc., may be included as either Direct Labor or Indirect Labor. Both methods have advantages and disadvantages.

### DIRECT COST OF DIRECT LABOR

8.7 "Direct Cost of Direct Labor" for a specific contract consist only of base pay for the direct labor expended in the performance of the contract. Fringe or "payroll" benefits and Overhead are considered Indirect Costs (Section 8.8).

8.7.1 As stated earlier, Technical Analysis and Cost Analysis are often intermingled. This is especially true when examining labor costs. First examine the skills proposed. If they appear to be reasonable, look at the hours proposed. If the hours are reasonable, check the labor rates. Determine if any rates are higher or lower than those of comparably qualified persons. If the individual elements look reasonable, you can conclude that the total estimated Direct Cost of Direct Labor is reasonable. If any element is suspect, discuss it with the Contractor.

8.7.2 As an example of this process, consider Table 8A, below, which is excerpted from Exhibit 8-1, Sample Price Proposal (at the end of this chapter). The comments following the tables demonstrate the type of analysis required.

TABLE 8A - DIRECT LABOR PROPOSAL				
Job Class	Employee	Hours	Rate (\$/hr)	Estimated Cost
Project Manager	Buster Brown	2,370	\$28.00	\$66,360.00
Designer	Lana Lang	3,550	\$24.00	\$85,200.00
Draftsperson		1,660	\$16.75	\$27,805.00
TOTALS		7,580		\$179,365.00

\* Regarding proposed skills, a Project Manager, Designer and Draftspersons are appropriate for the project.

\* The Pre-Solicitation Estimate (Exhibit 7-2) assumed a full-time design effort by the Contractor for about 18 months. Buster Brown, the proposed Project Manager,

is also the principal partner of Brown and Lang. The technical proposal indicated that Brown would dedicate about half of his time to the contract and that Lang, the designer, would work full time on the contract. The firm employs two other designers, one of whom is completing the third year of a four-year project while the other is working on several smaller projects that will be completed in a few months. The firm also employs one draftsperson plus a secretary/bookkeeper.

\* The proposed hours do not check out. Using 2,080 work hours per year, the cost proposal indicated that Brown will devote about 13.7 months  $[(2,370/2,080) \times 12 = 13.67]$  and Lang about 20.5 months  $[(3,550/2,080) \times 12 = 20.48]$  to the contract. Lang's time sets the length of the contract at 2.5 months more than anticipated. And Brown's time equates to 70% of Lang's time -- not the 50% stated in the proposal. Drafting time is about 9.5 months  $[(1,660)/(2,080) \times 12 = 9.58]$  which appears high, particularly since the firm has proposed using Computer Assisted Design Drafting (CADD) equipment.

\* The proposal is incomplete because it does not include back-up data to explain the hourly estimates. Labor hours cannot be verified with the given information. Bulk figures are rarely enough to substantiate estimated Direct Cost of Direct Labor. A detailed breakout of direct labor hours to show their derivation and justification is essential for a proper cost analysis.

8.7.3 Upon request, the Contractor responded with the information in Table 8B and a statement that payroll records on file in its accounting section would support the hours for similar work done by the firm.

TABLE 8B - HOURS BY JOB CLASS & TASK				
Job Class	Task 1	Task 2	Task 3	Total
Project Manager	1,000	1,100	270	2,370
Designer	900	2,250	400	3,550
Draftsperson	450	1,030	180	1,660
TOTALS	2,350	4,380	850	7,580

\* Assuming the break-out is not supported by comparison with the Pre-Solicitation Price Estimate or a technical review, consider visiting the Brown & Lang office (with a DOT&PF Internal Review Auditor, if available) to see payroll records used to prepare their proposal.

8.7.4 A person not trained in the professional fields required may need help from qualified technical people to perform the cost analysis. A technical review will usually result in modifications or questions to be addressed during contract negotiations. Generally, proposed labor rates and other costs should not be divulged to technical people during their evaluations because knowledge of proposed costs could introduce unwanted bias. Some of the questions to be answered by a technical review are:

- Are the identified tasks appropriate for the project and adequately described?
- Do the proposed hours agree reasonably with the proposed tasks and methods for performing the contract?
- Are the proposed skill levels in line with the work to be done? (Do not pay professional-level rates for low-skilled tasks.)
- Do excessive contingencies appear to be built into the hourly estimate?

8.7.5 Lastly, are proposed rates per hour for each skill reasonable? Several points about rates per hour must be understood:

8.7.5.1 Use of average rates: Except for key personnel named in a proposal, average rates for each skill rather than exact rates may be acceptable because individual salaries may vary for the same type work based on length of service, merit educational qualifications, etc. Proposals generally do not name all support personnel who will be put on the job. The Contractor may even hire additional people. Generally, "average rates" for other than named key personnel are adequate for estimating as long as the spread between actual direct labor rates do not exceed \$10/hour.

8.7.5.2 Forecast for time of performance: Rates may be a forecast of what the Contractor believes will be in effect at the time the work starts and for the duration of the work. The successful Offeror must divulge the current rates and the basis for the forecasted rates during negotiations.

8.7.5.3 Recent changes in labor force: Rates may vary with the size of the labor force. If a firm is forced by a reduction in work to let people go, it will likely retain the most valuable people and let the marginal workers go. It is generally not practical to reduce the pay levels of these higher quality workers who remain. The overall affect will be to raise the average pay rate to a level above what would otherwise be expected. If the firm later sees an improvement in its volume of business, it will hire additional people, generally at lower pay levels than apply to long term employees. This addition of people will gradually cause the average rate per hour to fall.

8.7.5.4 Method of calculating rate: Rates per hour may also vary among firms for employees doing the same type work because of differences in the way rates per hour are calculated. Some firms may calculate rates per hour without including Fringe Benefits in the rates. Other firms include costs of Fringe Benefits with base pay when calculating the rates per hour. The two methods will produce very different results.

8.7.5.5 Overtime Rates: Payment on Overtime should be controlled by specific provisions negotiated into a

Contract. Exhibit 8-2 (at the end of this Chapter) demonstrates overtime rate calculations.

8.7.5.6 Principals may be included in the Direct Cost of Direct Labor for any time they are productively engaged in work necessary to fulfill the terms of the Contract, provided this is the firm's normal practice and that their labor is not also included in Indirect Costs. If principals perform routine services, such as standard design and drafting work, which could be performed by lesser-salaried personnel, the hourly rates billed for these services should not exceed those rates paid to employees performing the same or similar work.

8.7.5.7 Aside from verification by audit, labor rates may be checked for reasonableness by comparison to Alaska Department of Labor prevailing rates for the area, comparison to rates proposed by other firms for similar skills, and comparison to Alaska State Employee labor rates (see Exhibit 7-1 at the end of Chapter 7) for similar skills. Firms are likely to pay their employees the usual rate in the area for people of like skills and experience. Some firms may pay slightly higher labor rates or incur somewhat higher labor-related costs (e.g. fringe benefits) to reduce employee turnover. This is generally cheaper than incurring continuous training costs to orient new employees to the job. It is very important to compare "apples to apples". Differences in the basic methods of calculating rates may cause comparisons to be very misleading.

## INDIRECT COSTS (IDC)

### Fringe or "Payroll" Benefits plus Overhead

8.8 Indirect Costs are any costs that are not direct. This statement may seem ridiculous but it is a good definition. Indirect Costs are expenses that cannot be directly identified with specific contracts or tasks. They can loosely be described as "general operating expenses". Even a paperboy has Indirect Costs; consider shoes worn out delivering the papers.

8.8.1 Contractors recover Indirect Costs by spreading the costs among all contracts in the form of an Indirect Cost Rate. In this handbook, Indirect Costs are divided into three categories: 1) Fringe or "payroll" benefits, 2) Overhead (General and Administrative Expenses), and 3) allocated "Home Office" Overhead (if applicable). Examples of Fringe Benefits include social security taxes, medical insurance premiums, and vacation time. Examples of Overhead include building rent, depreciation, utilities and Indirect Labor. Some travel, auto, computer, etc. costs may also be Overhead if not specifically attributable to a contract.

\* Note: As stated above, some firms do not include Fringe Benefits in Indirect Cost but choose to combine it with base pay for a total salary rate. This handbook always considers Fringe Benefits in the Indirect Costs component of price for the purposes of uniformity and price comparisons.

8.8.2 Allocation divides Indirect Costs among contracts, tasks or activities. There are many ways to allocate Indirect Costs and a full discussion is beyond the scope of this text. Generally, when labor is a predominant factor, bases such as Direct Labor Hours or Direct Cost of Direct Labor are used. When both labor and material are heavy components, it is better to use a base that takes both labor and material into consideration.

8.8.2.1 Because this handbook applies to Professional Services, only the allocation of Indirect Cost based on Direct Cost of Direct Labor is described for estimating and analyzing contract costs. Professional Services contracts are usually very labor intensive and Indirect Costs can be allocated fairly among all contracts on the basis of incurred Direct Cost of Direct Labor. Occasionally, the use of a Direct Labor base may distort total or unit costs for a particular service, product or item of equipment. In such cases, an auditor should be consulted to resolve the matter, perhaps with a separate allocation method or negotiated unit price or a fixed price.

8.8.2.2 Allocation of Indirect Cost using a Direct Cost of Direct Labor base is accomplished as follows:

$$\frac{(\text{Total IDC for FY})}{(\text{Total DCDL for FY})} \times 100 = \text{IDCR \%}$$

If the Indirect Cost Rate (IDCR) is 150%, this means that for every \$1.00 of Direct Labor that is estimated or incurred for a contract the maximum Indirect Cost the Contracting Agency may agree to pay is an additional 150% or 1.5 times the Direct Cost of Direct Labor for a total of \$2.50. The IDCR provides a simple means for estimating Indirect Cost for any contract. In Exhibit 8-1, Brown & Lang estimated Direct Cost of Direct Labor at \$179,365. The Firm proposed an IDCR of 152% and accordingly estimated \$272,635 for Indirect Costs. This example demonstrates the fact that Indirect Costs typically exceed (and are sometimes more than double) the amount of Direct Cost of Direct Labor.

8.8.3 Indirect Cost Rates (IDCR) can be applied in several ways, as follows:

- \* Fixed (F) - IDCR is fixed for the duration of an agreement.
- \* Fixed/Provisional (F/P) - IDCR is fixed for a specific period after which it becomes a provisional rate until an audit is completed and used to negotiate a revised fixed rate.
- \* Provisional (P) - IDCR is provisional until completion of a post performance audit to establish the actual incurred rate which is used to negotiate a final IDCR for the period covered by the audit. Post performance audits may be done each fiscal year or once after the completion of a multi-year contract.

8.8.4 The Indirect Cost Rate (IDCR) is negotiable because it is an estimate of many variable and semi-

variable elements that change with or without regard to business volume. The size of a firm and its accounting practices can dramatically affect its IDCR. Changes in a firm's management objectives can affect the actual IDCR, e.g. decreasing marketing emphasis and increasing emphasis on reducing cost. The actual IDCR is not a static number. Contractors are concerned that the IDCR allow them to recover all costs associated with a Contract. The Contracting Agency is concerned that we participate only in an amount of Indirect Costs which results in a price that is reasonable in light of prevailing market conditions and which is not established solely on the basis of the proposed Contractor's individual business situation.

*8.8.5 Within DOT&PF when a pre-negotiation audit is required, the analysis of Indirect Costs is accomplished by the Internal Review Section. Internal Review Auditors can ascertain the Contractor's accounting policies to ensure that costs are allocated only once, and on only one basis, to any contract. The complexities of cost standards for negotiated contracts are considerable and often a subtle issue can result in significant profit or loss for the Contractor or Contracting Agency. For federally supported contracts, some costs may be non-participating. The Internal Review Audit Report establishes a negotiated IDCR to be used for a designated period in all contracts between DOT&PF and the Contractor.*

8.8.5.1 When the Internal Review Section conducts pre-negotiation audits, the audit staff confers with the Professional Services Coordinator or other appropriate staff prior to releasing audit results to the Contractor. Together, they review the audit findings and establish a negotiation strategy and IDCR objective. Allocation of questionable indirect costs that do not benefit all contractors in Alaska may be disallowed -- especially if the proposed or audited IDCR is higher than the industry norm for other acceptably qualified contractors. The involved staff then negotiates with the Contractor to establish a Fixed/Provisional IDCR to be applied to all DOT&PF contracts statewide. The Fixed/Provisional IDCR is fixed for the last six months of the Contractor's current fiscal year plus the first six months of the Contractor's next fiscal year, after which it becomes Provisional until another audit is completed and a new Fixed/Provisional rate is negotiated.

- \* In certain cases, when a Contractor's actual annual audited IDCR fluctuates significantly (e.g., 15% or more), a Provisional IDCR may be necessary in lieu of a Fixed/Provisional rate.

*8.8.5.2 Generally, the current negotiated IDCR will be automatically used in any contract price negotiations. However, if that rate appears significantly higher for a particular contract, then it may be further examined to ensure that it is reasonable for the required services and also compared to that of other available contractors with similar qualifications, experience and ability. For example, if a Contractor's proposal or an Audit finding*

includes in the IDCR significant costs for items of equipment (e.g. a gas chromatograph, a drill rig, etc.) which are not necessary for all contracts, consideration may be given to disallow such equipment from Indirect Costs, thereby lowering the IDCR. Other examples of Indirect Costs which might be considered unreasonable and disallowed, in the amount they exceed the norm are:

- \* Non-Productive Time
- \* Home/Regional Office Overhead
- \* Employee's Personal Use of Firm Owned Vehicles
- \* "Class A" Office Space

\* Note: If it is needed for a specific contract, any equipment item excluded from Indirect Costs should be included as a direct contract cost based on a negotiated unit rate or a total fixed price for the contract.

\* Caution: These examples of "unreasonable costs" are often reasonable if the Contractor provides needed, highly qualified personnel and timely services as a result. They are listed here only to further demonstrate that the IDCR is a variable figure and that when costs are significant they should be investigated. However, if the amount involved by making an issue of these items is inconsequential, it may not be worth the effort. Any investigation of Indirect Costs should be coordinated with the Audit staff to insure that any presumption of cost unreasonableness is valid.

8.8.5.3 Another example of when further negotiation of the current negotiated IDCR may be appropriate occurs when only the services of one engineer are needed for a short period without any additional staff or travel. Assume the selection process results in a nearly tied score between a top ranked multi-disciplinary firm and the runner-up, a sole proprietor, who works at home. Negotiations with the top ranked firm stalemate on the current negotiated IDCR of 170%. It is very probable that the runner-up has Indirect Costs significantly less than 170% and likely less than 100%. If the top ranked firm will not accept a lower IDCR for this particular contract, which will employ only one engineer, then negotiations could be terminated and begun anew with the runner-up.

**8.8.6 In federally assisted contracts, the amount of federal funding participation for Indirect Costs is limited by the IDCR established in the Contracting Agency's approved Audit Report. If payments to a Contractor exceed the amount calculated using the established rate, the amount in excess may be non-participating.**

#### OTHER DIRECT COSTS (ODC)

8.9 Although Direct Costs of Direct Labor are the primary direct costs incurred for Professional Services Agreements, "Other Direct Costs" may be incurred specifically for a contract and readily charged to it. Examples include Subcontracts and Expenses for the

following:

- \* Transportation
- \* Food and lodging
- \* Materials and supplies
- \* Reproduction
- \* Laboratory tests
- \* Computer time
- \* Special equipment (purchase, rental or use)

8.9.1 Pre-Solicitation and/or Pre-Proposal Estimates do not usually include a list of all direct cost items which may be necessary for performance of the contract, although some major items may be identified. In fact, an Offeror's proposed direct expenses may vary greatly from Agency estimates, based on the Offeror's organization and approach to performing the contract. For example, out-of-town contractors will have differing transportation costs; "high-technology" firms may have low direct labor coupled with high computer usage. Specialized engineering firms may subcontract for some disciplines that are provided "in-house" by other firms. As described in the section on Indirect Cost, some firms may include all non-labor costs in their IDCR - others may prefer a low IDCR and keep meticulous records for direct cost accounting - while others may choose some intermediate level of direct cost accounting. *Thus, the first task when analyzing Other Direct Costs, is to "flag" those items which may be duplicated in the Indirect Costs.* Discussion with a Professional Services Coordinator or Auditor may help with this task.

8.9.2 *The analysis of Other Direct Costs is done essentially the same way as for Direct Cost of Direct Labor -- i.e., examination of each line item and quantity for applicability to the contract, followed by examination of cost and Fee for each item.* The following general comments may be useful:

- \* Travel Costs: If you contract with a local firm you may receive more labor hours for the same amount of money than if you contract with an out-of-town firm. You must decide if the qualifications of a non-local firm warrant the travel costs.
- \* Transportation: Rented vehicles should be economy rates. Airfare should be coach class. Charter flights only if absolutely necessary.
- \* Food/Lodging: Generally limit amounts to the appropriate Alaska State Employees per diem schedule, unless circumstances (identified in writing) warrant higher rates.
- \* Equipment, Materials and Supplies: Are they necessary? If so, are the proposed costs reasonable? Rates for materials, vehicle and equipment time, computer time, laboratory tests, reproduction, etc., can result in an unreasonable profit if they are not based on actual Contractor costs (purchase price, operational and maintenance expense, depreciation and technological

obsolescence, etc.). If not included in Indirect Costs, allowable equipment expenses are generally limited to a direct cost rate based on IRS code useful life criteria and a minimum 240 day annual usage. Profit is determined separately (Section 8.10).

- \* **Unit pricing without cost analysis may be used only when a proposed price is established practice with the primary vendor and it is based on non-discounted price lists available to the general public. Also, there must exist substantial (exceeding 60%) demonstrable sales history to non-government clients if the total price for all units of an item may exceed the statutory Small Procurement limit.**

\* *Note: Comparison to "market rates" is not an acceptable measure of contractor costs when the total price for all units of an item may exceed the statutory Small Procurement limit. The difference between a "market rate" and Contractor cost is Profit.*

- \* Subcontracts: Consider the Offeror's procurement procedures (e.g., negotiated or bid) and control exercised over Subcontract cost (Subcontract "Price" is a "Direct Cost" to the Offeror). **Each Subcontract exceeding \$250,000 must be subjected to a Cost Analysis and audit.** Be alert to possible pyramiding of costs and profits by agreements between divisions, plants or subsidiaries of a firm or between Subcontractors and lower tier Subcontractors. These possibilities require extra scrutiny. Proposed prices should be on the basis of cost incurred.
- \* E & O Insurance Premiums for some policies of Professional Liability Insurance for Errors and Omissions coverage are based on a formula which involves a percentage of the insured firm's annual gross cash flow. In such cases, a contract that includes a substantial amount for Subcontracts could significantly increase a firm's E & O Insurance Premiums for a future policy period. Accordingly, it may be reasonable to negotiate a special allowance for E & O Insurance premiums.

8.9.3 Lastly, consider if the line item costs and total for Other Direct Costs are reasonable for the Statement of Services. This is generally a subjective decision based on the Contractor's comprehension of the scope and overall approach to performing the contract.

8.9.4 As an example of this process for analysis of Other Direct Costs, consider Table 8C, below, which is excerpted from Exhibit 8-1, Sample Price Proposal (at the end of this Chapter). The "#s", shown in the right column, are keyed to the comments that follow the table and demonstrate the type of analysis required. The Contractor was asked for additional information, which is included in the analyst's comments.

**TABLE 8C - OTHER DIRECT COSTS PROPOSAL**

Item Under Analysis	Proposed Amount	Negotia Obj	#
Subcontracts			
Photogrammetric Cross Sect	\$5,036	\$5,036	1
Repro: 20 CPS, 400 Dwgs	18,000	7,500	2
Firm Owned Equipment			
CADD	83,000	0	3
Van 4X4	16,800	12,000	4
Travel			
ANC/FAI, 2 trips, 3 days, 2 pers	3,400	1,175	5
ANC/JNO, 2 trips, 3 days, 2 pers	3,900	0	6
TOTALS	\$130,136	\$25,711	

Comment #1: Proposed Subcontract in the amount of \$5,036 for photogrammetric cross sections is acceptable. The amount is reasonable and it is based on adequate competition since the Contractor obtained three proposals for the work as shown in Table 8D.

**TABLE 8D - PHOTOGRAMMETRIC CROSS SECT**

Larry's Air Photo Services	\$4,985	16 work days
Curly Photogrammetry Co.	\$5,490	15 work days
Moe's Mapping	\$5,036	10 work days

- \* Moe's Mapping was selected based on second low offer and ten workdays versus 16 workdays for the lowest offer.

Comment #2: Subcontractor charges \$2.25/drawing for color reproduction. Only 10 copies will be needed of any drawings thus estimate may be cut in half. Check print shops for costs. Also consider black and white reproductions for some of the drawings. Also how were number of drawings estimated?

Comment #3: Computer Assisted Design Drafting equipment is the largest cost item. Contractor's estimate is based on \$50/hour standard billing rate, which includes operator. Since the CADD estimate of 1,660 hours includes operator, why does the Direct Cost of Direct Labor estimate include 1,660 hours for draftspersons at \$16.75/hour?

It appears that the CADD operator hours are double counted in the estimate. Subtracting the operator costs (\$16.75 x 2.52 = \$42.21) from the proposed \$50/hr rate leaves \$7.99/hr for equipment costs. The Internal Review Audit Report states that all equipment expenses (including CADD) are included in the IDC Factor -- thus no separate equipment rate charges are allowed. The Audit Report also stated, however, that Brown & Lang's proposed IDC of 152% anticipated that the CADD equipment rate would be approved.

It is unlikely that the Contractor will accept an IDC of 152% with no additional compensation for CADD. Since the Audited IDC is 172.52%, there is some room for negotiation. Upon request, the Auditor reviewed accounting data and established that 3.5% of the 172.5% can be attributed to CADD expenses. Change estimate for CADD to zero, but be prepared to offer an increase in the proposed IDC from 152% to 155.5%.



Comment #4: Contractor estimated use of the firm's van based on 40 hours/week for 84 weeks at \$5/hour or \$16,800. This represents \$40/day or \$200/week, which appears reasonable; however it is doubtful that the van would be used only for this project. Also, is the van a personal employee vehicle? Leased van might cost \$6,000/year. Two years = \$12,000.

Comment #5: Trips to Fairbanks and Juneau proposed for familiarization with functional requirements and operations. One trip to Fairbanks appears reasonable. Juneau Airport is not state owned and its geographical conditions are not at all similar to those at FIA, AIA or the project site. Agency staff can coordinate with Juneau Airport for any necessary information. Food and lodging should not exceed state per diem rates unless specific reasons are cited during negotiations. A revised travel cost estimate is presented in Table 8E:

TABLE 8E - FAIRBANKS TRIP		
Expenses	Proposed	Negotiation Obj
Airfare	2RT @ \$250 = \$500	2RT @ \$250 = \$500
Food & Lodging	6 days @ \$150 = \$900	6 days @ \$85 = \$510
Car Rental	3 days @ \$100 = \$300	3 days @ \$55 = \$165
Cost for 1 Trip	\$1,700	\$1,175
Cost for 2 Trips	\$3,400	\$0

Comment #6: Juneau trips deleted per Comment #5.

### FEE (Profit)

8.10 Profit is the basic motive of business enterprise. Simply put, it is the amount left after all costs of doing business are paid. Contractors desire to maximize profit.

Maximum Profit (Price - Cost)

The Contracting Agency seeks to pay no more than a fair and reasonable price, wherein the exact amount of profit that a Contractor makes depends on the Contractor's initiative in controlling its costs.

Fair Price (Cost + Profit)

The motivations of the Contractor and Contracting Agency are not the same.

\* Note: See paragraph 8.3.2 for an explanation of Profit versus Fee. The term "Fee" will be used hereafter.

8.10.1 When negotiating Fee, a common misconception is that the negotiated Fee is what the Contractor will actually net after costs are paid. Analysis of a Contractor's Price Proposal results in setting negotiation objectives for Cost and Fee. This enables the Contracting Agency to enter price discussions with goals for Cost and Fee to be achieved if reasonably possible. As noted above, the Contractor enters price discussions with a different focus. When an agreement is reached on estimated Cost and Fee or on a Fixed

Price and a contract is executed, it does not guarantee that the Contractor will actually make the negotiated amount for Fee. The Price Proposal, Cost Analysis and negotiation process is based on estimates of future costs and a reasonable Fee based on those estimated costs. Actual costs will rise and fall because of factors beyond precise control by either party and/or factors that cannot be anticipated. The chances of actual cost coinciding exactly with the negotiated amount are slight; and so the same with Fee. This is true even in a cost reimbursement contract; if the Contractor incurs some costs that are disallowed, it takes a loss on those costs which reduce its Fee.

8.10.2 There is no single formula for determining a reasonable Fee. Some Contractors set Fee goals, e.g. 20% of costs. If a Contractor does not make its goal on one contract, it will try to make up the difference on another contract. Contractors are not required to submit a detailed computation to support their proposed Fee, and they seldom do so. Many government agencies use "Structured Fee" systems to calculate a "Fee Objective" based on the Cost Objectives determined for a contract. The sum of Fee Objectives and Cost Objectives yields in a systematic way, a fair and reasonable Price in which Fee is a function of risk, effort, skills, etc. required for a contract. Exhibit 8-3, is a completed Fee Objective Worksheet for the Brown & Lang proposal used in this chapter for demonstration of Cost Analysis. An explanation of how to calculate the Fee Objectives for each Cost Component is contained in the Instructions with the file: "feewksht".

*8.10.3 A Fee Objective Worksheet should be completed for each Contract, Subcontract and any change to a Contract or Subcontract, which exceeds \$250,000. While it is possible to manipulate the calculation to arrive at a pre-determined amount of Fee, it (aside from being a ridiculous effort) would be a violation of these procedures to do so. Preconceived notions of what a "proper" Fee is (generally in terms of a percent of cost) shall not be used in structured Fee determinations.*

\* **Caution:** The Fee Worksheet provides an "objective", not a mandate. Fee is a small amount of total contract Price. Keep it in perspective. The real opportunities for Price savings generally result from Cost, not Fee, negotiations.

8.10.4 Lastly, while proposed contract Costs and Fee may be reasonable for a specific contractor in its situation, this does not guarantee that the proposed Price is reasonable, if it is higher than what other firms with similar qualifications and abilities might charge. In such cases, negotiation of a lower Indirect Cost Rate and Fee may be appropriate.

### METHODS OF PAYMENT (Contract Types)

8.11 Methods of Payment are grouped into two broad categories: "Fixed Price" and "Cost Reimbursement".

The most significant difference between these categories is the Contractor's obligations to complete all necessary services and the Contractor's degree of responsibility for cost control.

8.11.1 "Fixed Price Methods" require the Contractor to complete the contract, regardless of cost, for the amount of a Firm Fixed Price specified in the contract. Fixed Price methods are preferred for use and should be used when the extent and type of work necessary to meet contract requirements can be reasonably specified and the cost can be reasonably estimated. With this method, the Contractor's ability to make a profit is directly related to the Contractor's control of performance costs. However, when risks are unknown or not readily measurable in terms of cost, the use of Fixed Price contracts can result in inflated prices, poor performance, disputes, and claims when performance proves difficult; or excessive profits when anticipated contingencies do not occur.

8.11.2 Cost Reimbursement Methods require the Contractor to perform as specified in the Contract until it is completed or until incurred costs reach a specified Ceiling Cost, whichever occurs first. The Contractor may complete the contract for less than the Ceiling Cost, in which case the Contracting Agency obtains a price savings over the contract estimate; or, the Contractor may fail to finish the work within the Ceiling Cost. In the latter case, the Contracting Agency may (1) modify the contract to increase the Ceiling Cost or (2) terminate the contract and accept whatever work has been completed. The Contractor may not exceed the Ceiling Cost (except at its own expenses) without prior approval and a contract amendment executed by both parties.

8.11.2.1 The Contracting Agency assumes all, or essentially all cost risk under a Cost Reimbursement method of payment and pays, in addition to costs, a Fee as specified in the contract.

8.11.2.2 Cost Reimbursement is appropriate when the uncertainties involved in contract performance are of such magnitude that the cost of contract performance cannot be estimated with sufficient certainty. Cost Reimbursement methods require close monitoring of the Contractor's performance to ensure that the objectives of the contract are being met without excessive costs.

8.11.3 *The objective when selecting a Method of Payment is to obtain the best value on services in the time required and at the lowest price to the Contracting Agency. To achieve this objective, the elements of cost, time, risk, and profit incentives bearing on the performance must be evaluated.* Among the factors to consider are:

- \* Type and complexity of the services to be procured.
- \* Difficulty of estimating performance costs such as

the inability of the Contracting Agency to develop definitive specifications to identify the risks to the Contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract.

- \* Administrative costs to both parties.
- \* Degree to which the Contracting Agency must provide technical coordination during the performance of the contract.
- \* Stability of wage levels.
- \* Urgency of the requirement.
- \* Length of contract performance.

8.11.3.1 Final selection of method is a matter for contract negotiations because Method of Payment and Price are interrelated. Also, during negotiations, the extent and nature of uncertainties involved in contract performance are identified as well as their impact on price. The negotiation process is presented in Chapter 9.

8.11.3.2 It is self-defeating for the Contracting Agency to agree to a Method of Payment that would place an unreasonable economic risk on the Contractor since such action may jeopardize satisfactory performance of contract.

8.11.4 Specific Methods of Payment range from "Firm Fixed Price", in which the Contractor must complete all services required and the Contractor has full responsibility for performance costs and resulting profit (or loss); to "Time & Expenses", in which the Contractor serves as needed with little, if any responsibility for performance cost. In between are various methods that are tailored to the degree of performance uncertainties, cost responsibility and the opportunity for profit.

8.11.4.1 Methods used for Professional Services Agreements are generally those described in this Chapter. Other methods - except Cost Plus a Percentage of Cost - may be used if the Contracting Officer makes a written determination that such method is in the best interest of the Contracting Agency and if all funding entities concur.

**8.11.4.2 For a more extensive discussion of Methods of Payment ("Types of Contracts") see 48 CFR 1, Subpart 16, and the ABA Model Procurement Code (1980) Chapter 3, Regulation 3-501.**

**8.11.4.3 In accordance with AS 36.30.370 and 48 CFR 1, Subpart 16.301-2(C), a Cost Reimbursement method may be used only if the Contracting Officer determines in writing that:**

- **Such a contract is likely to be less costly to the Contracting Agency than any other type or that it is impracticable to obtain otherwise the supplies, services, or construction.**

- **The Contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated.**
- **The Contractor's accounting system is adequate to allocate costs in accordance with 48 CFR Part 31.**
- **Contracting Agency personnel will be assigned to closely monitor performance of the work by the Contractor.**

#### **FIRM FIXED PRICE (FFP)**

8.11.5 The Firm Fixed Price method provides a price that is not subject to adjustment because of variations in the Contractor's cost of performing the work specified in the contract. The Fixed Price, once negotiated, may be adjusted only as a result of subsequent changes in the services. Fixed Price, when appropriately applied, places maximum risk upon the Contractor. Because the Contractor assumes full responsibility, in the form of profits or losses, for all costs under or over the Firm Fixed Price, the Contractor has a maximum profit incentive for effective cost control and contract performance. Use of Firm Fixed Price imposes a minimum administrative burden on the contracting parties. Firm Fixed Price is suitable for use when reasonably finite design or performance specifications are available and when a fair and reasonable price can be established at the outset. Such as when:

- Adequate competition has made initial proposals effective
- There are reasonable price comparisons with prior purchases of the same or similar services which were made on a competitive basis or supported by valid cost or pricing data
- Cost information is available permitting the development of independent estimates of the probable costs of performance
- The uncertainties involved in contract performance can be identified and reasonable estimates of their possible impact on costs made, and the Contractor is willing to accept a Firm Fixed Price at a level which represents assumption of a reasonable proportion of the risks involved

8.11.5.1 Payments of a Firm Fixed Price may be "Lump Sum" or monthly "Progress Payments".

8.11.5.1 A form of Firm Fixed Price is Unit Prices in which specific, all-inclusive rates of payment for items of work, such as reproduction, printing, computer time, and standard materials testing (laboratory and field) are established. Unit Prices require constant and direct control by the Contracting Agency and should not be used without an audit if the total amount of a unit priced

item in a Contract or Subcontract exceeds the statutory Small Procurement limits.

#### **FIXED PRICE PLUS EXPENSES (FPPE)**

8.11.6 The Fixed Price Plus Expenses method provides for reimbursement of particular Direct Expenses that are not included within the Fixed Price. FPPE reduces Contractor risk for the particular expenses cited in the Contract. It provides some flexibility when a Fixed Price for Direct Cost of Direct Labor, Indirect Costs and Fee can be negotiated, but Other Direct Costs, e.g. transportation, materials, laboratory test, subcontracts, etc., may vary considerably dependent on need, quantity or other factors. In addition to the Fixed Price, the Contractor is reimbursed for the particular expenses not to exceed an established Ceiling Price.

#### **COST PLUS FIXED FEE (CPFF)**

8.11.7 The Cost Plus Fixed Fee method provides for payment to the Contractor of an agreed Fixed Fee in addition to reimbursement of allocable incurred costs, not to exceed an established Ceiling Cost. The Fee does not vary whether or not the actual cost of contract performance is greater or less than the initial estimated cost. Thus although the Fee is fixed, the price will depend on the allocable costs reimbursed. The Fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the Statement of Services specified in the contract.

8.11.7.1 The Statement of Services must clearly define specific goals and specific end products required. The Contractor must complete and deliver the specified end-products as a condition for payment of the entire Fixed-Fee and within the Target Ceiling Cost if possible. In the event the work cannot be completed within the Target Ceiling Cost, the Contracting Agency can elect to require more work and effort from the Contractor without any increase in Fee provided it increases the Target Ceiling Cost.

8.11.7.2 CPFF provides the Contractor with only a minimum incentive to control costs. Conceptually, the CPFF method, wherein all costs risk is that of the Contracting Agency, is the exact opposite of a Firm Fixed Price, wherein all cost risk is that of the Contractor. CPFF is suitable for use when the extent of labor and expense cannot be accurately established or when the level of effort required may vary with the results of services provided. In such cases, a cost underrun or overrun could result more from the uncertainties than from the Contractor's effort, or lack of effort, at Cost Control. However, because CPFF does not recognize or encourage cost control measures, it is a least desirable Method of Payment. Use of CPFF imposes a major obligation on the Contracting Agency to manage the contract effectively and efficiently as possible.

## TIME AND EXPENSES (T&E)

**NOTE: The T&E Method of Payment is prohibited on all FAA funded contracts for the Prime Contractor. The T&E Method of Payment may be utilized for subcontractors.**

8.11.8 The T&E method of payment is used to obtain labor at a fixed and specified hourly rate, (which includes all base salary cost, indirect cost, and Fee) plus expenses at cost, with a Target Ceiling Price. If expenses are zero, this method may be referred to as "Labor Hour". Another variation of the T&E method uses a per diem rate in lieu of hourly rates. Such a method is common for court appearances or other engagements in which the Contractor appears as an expert. The per diem charge is considered earned for each day, although the Contractor may finish in a fraction of the day.

8.11.8.1 T&E is used when it is not possible at the time of contracting to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. For Construction

Related Professional Services contracts, the T&E method should be used only for Small Procurements, Subcontracts or elements within a contract, each not exceeding the statutory Small Procurement limits. Although it may be necessary, the use of T&E is not favored because it provides no incentive for Contractor cost control or labor efficiency. The Contracting Agency must perform very close surveillance of the Contractor to ensure that efficient methods and effective cost controls are used.

8.11.8.2 The T&E Method of Payment is not considered a "Cost plus Percent of Cost" contract prohibited by AS 36.30.370 and federal regulations. Under T&E, the Contractor's Profit is not determined as a percentage of the total cost of a contract, rather profit is a component of the "Unit Price(s)" for labor hours. Expenses are reimbursed at Direct Cost and a Target Ceiling Price for the total of labor and expenses is established in each Contract. The Ceiling Price may only be exceeded if a contract Amendment is executed.

8.12 Exhibit 8-4 presents a comparison of each Method of Payment based on an estimated \$650,000 contract.

# Chapter 9

## NEGOTIATIONS

### ACTIVITY # 9

Text of this chapter has been specifically written for contracts exceeding \$250,000; however, the concepts presented apply to all negotiations regardless of contract size. Less "formality" is used for contracts under \$250,000.

#### NEGOTIATION TEAM

9.1 *For contracts in excess of \$250,000 the Project Manager and at least one other person shall be appointed by the Contracting Officer to a negotiation team.* If more assistance is needed, additional members who possess the range of disciplines and skills appropriate to evaluate the services required may be appointed. Characteristics that the team should possess are: knowledge of negotiation techniques, a willingness to listen effectively to a Contractor's position, and the ability to craft responses which meet Agency objectives. The individual best able to isolate issues and communicate effectively should be the principle negotiator. The team must decide how many persons will represent the Agency at negotiation meetings.

- \* Advantages to a sole negotiator include the avoidance of any open disagreements among the Agency team, and also a psychological advantage of being able to put off some response to a Contractor's proposals or inquiries until after private consultation with the team. Disadvantages to a sole negotiator include the need to be a master-at-everything and the difficulty in keeping track of overall negotiation progress while focusing on specific issues.
- \* Advantages of team negotiations include greater depth of discussion wherein important technical, schedule or cost issues are less likely to be overlooked. A greater source of facts and experience is readily available.

#### NEGOTIATION OBJECTIVES

9.2 Successful negotiations derive from adequate preparation.

9.2.1 First, a thorough understanding of the project, priorities, problems, alternatives, and schedule, is essential. During negotiation, the Contractor will present a task breakdown which is its proposed methodology for performing the contract. This proposal must be analyzed for many parameters. Will it accomplish the project goals? Does it use accepted practices and procedures or is it suggesting innovative methods? Contractors often attempt to market services at this stage. They present a task breakdown that includes services, although useful and perhaps desirable, may not be absolutely necessary. Judgement must be exercised to determine what services are essential and what are window dressing. Then you must convey your position to the Contractor - which may require

suggesting alternative methods or reference to historical precedent to convince an aggressive Contractor.

9.2.2 Secondly, negotiation centers around cost estimates. **Prior to obtaining and opening any Offeror's Price Proposals, an INDEPENDENT Pre-Proposal estimate must be prepared. This Estimate must be as thorough and detailed as if you were submitting a Price Proposal for the contract.** It must address labor, expenses, subcontracts and profit. Chapter 8 provides a discussion of the components of price (which are also summarized in Chapter 7).

9.2.3 Remember, however, that estimates are just that. No one knows how much a job will actually cost. Yet contracts must have a price attached. Contractors present hourly breakdowns which must be analyzed in detail. How much time is appropriate for development of a base map? Or for development of a typical cross section? If 100 hours are required, is it justified to have a professional civil engineer at \$100 an hour expend 60 hours and an engineering assistant at \$45 an hour expend 20 hours and a draftsman at \$35 an hour expend 20 hours; or should it be an engineer for 35 hours, an assistant for 40 hours and a draftsman for 25 hours? Your position must be supported based on experience and other appropriate justification. For example, how much work can an engineering assistant perform in an hour? How many hours per task? Are special analyses required or is available data sufficient? Are site visits necessary or are "as-built" drawings adequate to complete the service?

9.2.4 *Develop negotiating positions regarding the Contractor's proposal. Organize your analysis around the following separate elements:*

- \* *Statement of Services (per Chapter 7) - Tasks, Subtasks, Labor Effort, Equipment needed, and Materials needed.*
- \* *Schedule.*
- \* *Costs (per Chapter 8) - Direct Cost of Direct Labor, Indirect Cost (Fringe Benefits and Overhead) and Other Direct Cost (Subcontractors, Equipment and Reimbursable Expenses).*
- *Fee - (For contracts over \$250,000 use file; "fewkshst").*

9.2.5 *Prepare a list of Negotiation Objectives, which should address at least the following:*

- \* each issue to be negotiated.

- \* a minimum and maximum position on each issue.
- \* the order in which issues will be presented to the Contractor.
- \* Cost Objectives (minimum and maximum amounts) for DCDL, IDC and ODC.
- \* Fee Objective (minimum and maximum amounts) with consideration of the Method of Payment desired and other methods which may be acceptable.
- \* Total Price Objective (perhaps one for Fixed Price and another for CPFF).

9.2.6 The fundamental objective of all negotiations is to ensure a full understanding of each party's expectations and obligations and to agree upon a Price that is reasonable for the services provided and establish the Contractor's Fee at an amount that is appropriate for the effort expended. Rarely will you and the Contractor fully agree on every point; however, both parties must bargain with the understanding that compromise might be necessary to achieve agreement. Exhibit 9-1 is an example of Negotiation Objectives, based on the Brown and Lang Price Proposal (Exhibit 8-1) used in Chapter 8 for demonstration of Cost analysis. It provides dollar objectives and comments to explain them.

### **PREPARATION FOR NEGOTIATIONS**

9.3. *Develop an agenda for the negotiation - just a few words for each item may be sufficient.*

9.3.1 Items to consider include:

- \* Introduction of participants and identification of team leaders for the Agency and the Contractor.
- \* Discussion of agenda.
- \* Discussion of Terms and Conditions for the proposed contract (DOT&PF standard Agreement package in Chapter 12). Should a Contractor propose any changes to standard text, approval from a Professional Services Coordinator, and often the State Attorney General's Office, is required before changes may be accepted.
- \* Advise Contractor of Agency's Total Price Objective.
- \* Review the Statement of Services. Identify any changes to RFP services; discuss major tasks and allocation of direct labor hours for each job classification.
- \* Review items or services to be subcontracted, equipment requirements, and expense items. Identify those items that are acceptable and those that are not.
- \* Discuss any major differences. Restate work items to assure there is a clear understanding of services

(large differences are often the result of a misunderstanding).

- \* Review the project schedule to assure all milestones are understood. Restate completion date for all work.
- \* If the DOT&PF Internal Review Section has not established a current IDCR for the Contractor or a Subcontractor, negotiate IDCRs and how they will be applied (i.e., Rate used only to negotiate a Fixed Price or, if a Cost Reimbursement contract, will the IDCRs be Fixed, Fixed/Provisional or Provisional?) (See Chapter 8 for explanation.)
- \* Negotiate any issues regarding subcontracts, company owned equipment, unit priced items, reimbursable expenses, etc.
- \* All subcontracts exceeding the statutory Small Procurement limits should be examined in detail (services, schedule, DCDL, IDC, ODC and Fee).
- \* Summarize in writing any understandings reached that affect costs; e.g., the Contractor is advised to use existing geotechnical data rather than do more investigations now. If later work indicates need for further geotechnical work, a Contract Amendment would be required before work was performed.
- \* Negotiate final cost estimates, Fee, total Price, and Method of Payment.

9.3.2 Consider a mock negotiation or a trial run for large or complex contracts; or use one person as a "devil's advocate" to challenge your negotiation objectives. Talk with other Agency personnel who have recently negotiated with the same Contractor to gain a perspective of the Contractor's methods in negotiation. Try to identify all assumptions you may be making and then prepare responses should the Contractor not conform to those assumptions.

9.3.3 *Complete the following administrative tasks:*

- \* Arrange for a suitable meeting room that is private and will be free from interruptions and distractions. (Usually an Agency location is best.)
- \* Notify the Contractor of location, time and number of persons who will represent each party. Also provide a copy of an agenda.
- \* For complicated or large contracts arrange for someone to take minutes/notes during negotiations (may be a non-participant in the negotiations).

### **NEGOTIATION STRATEGY**

9.4 Agency Negotiators should keep the following basic objectives in mind during negotiations:

- \* Establish a complete understanding by all parties, both in mind and on paper, of the work to be done.

- \* Establish a positive working relationship with the Contractor. The manner in which the negotiations are conducted will have a definite impact on the success of the project. If the attitude is competent, cooperative and professional, more than likely, these attitudes will continue, on into the job and conversely, if they are confrontational and antagonistic, these attitudes are also likely to continue and are difficult to overcome.
- \* Establish a contract Statement of Services that is clearly defined, consistent and in sufficient detail to minimize future changes and to assure that there will be no claims resulting from the contract.
- \* Establish objectives and required schedules within the contract that the Contractor is expected to meet.
- \* Ascertain that the services shall be obtained at a reasonable cost to the Agency and yet provide fair compensation to the Contractor.

9.4.1 Negotiation involves offers and counter-offers. Often the Contractor's Offer (Price Proposal) is greater than the Agency's Price Objective. In such a situation, your opening counter-offer (position) is usually less than the Agency Price Objective, but it is based on a demonstrable cost analysis. This position leaves room to negotiate different concepts or perceptions of the required services and effort as they evolve during negotiations, yet still achieves the Agency Price Objective. Changes in your opening position are acceptable (and may even be anticipated) as long as they are logical and based on facts or reasonable assumptions. If you cannot negotiate within the Agency Price Objective, adjournment may be appropriate to allow for reassessment.

9.4.2 Strategy is the planning of your approach to reach agreement. It involves various techniques to convince the other party to see the logic of your point of view and to agree with you. Some negotiation techniques, which are used by both parties, include the following:

- \* Combinations. One party introduces several points into the discussion all at one time. In this way, concessions can be made to some points and gains can be made in others. Some of the issues raised could be considered "throwaways" -- that is, they are not too important and the one party had every intention of conceding them to the other party at some point in the negotiations. No issue should be conceded without making certain the other party knows it is getting a concession. This can then be brought up later in the negotiations as a reminder when bargaining on another topic.
- \* Coverage. One party may attempt to cover as large an area as possible to achieve its goal in one or more minor areas. For example, one party may want to negotiate a contract on a total cost basis rather than by cost element. The other party could oppose this by insisting that each cost element be

considered separately. The first party preferring a total basis, may assume that if each element were discussed separately, major changes would take place in the proposed price.

- \* Definite Action. This approach requires that you take a definite position or action against the other party, and then see what the other party does. For example, one side could claim that under no circumstances would a particular item be agreed to, then move on to the next item. The other party must then decide how important the point is and accept an indefinite delay in trying to resolve it or acquiesce and move on to the next item.
- \* Diversion. In this situation, one party acts as if it has more information than it really possesses. It is not exactly a bluff, but almost. You must take care so as not to make unfounded claims, but implications can be made, for example, about knowledge of future costs, in hope that the other party will come forth with additional information.
- \* Limits. These usually relate to limits placed on the various members of the negotiating team. In this way, the chief negotiator will always have the option of agreeing or disagreeing with the direction or trend a team member is taking.
- \* One Step at a Time. This is an effective strategy whereby one minor point after another is convincingly presented until a major concession is won. Both parties must constantly be aware of the status of the negotiation, keeping in mind the Negotiation Objectives. Each concession must be addressed to see how it fits into the overall picture.
- \* Participation. In this form of strategy, one party attempts to narrow the involvement of the opposite team members. For example, if an item is being discussed and a deadlock appears inevitable, one party may suggest that one member of each team meet separately to try to reach agreement and then bring that agreement back to the negotiating table.
- \* Patience. This approach involves delay, suspending, or putting off answering a position at the moment, thereby giving your team a chance to think over the proposition. The other side has the same opportunity and could change its offer after further consideration, so no time is wasted discussing a withdrawn or revised proposal. Also, the side making the offer will feel that its proposal is getting serious consideration and this is sure to impress them. Further, a lull in conversation could be meaningful, since knowing when to stop talking could be just as important and effective as talking.
- \* Ploys. An initial tactic by an Offeror is to say: "I am not authorized to negotiate a profit lower than x%" or "I cannot negotiate lower than a price of \$\_\_\_\_\_." These are devices to test the water.

Counter with statements about negotiating in "good faith," etc.

- \* Ranging. This is an approach whereby one party starts negotiations by announcing that its proposal is admittedly too high, but spends the entire negotiation period arguing for a price almost equal to its proposal. The other party must avoid joining the game of helping the confessing party get most of its costs accepted during negotiations. The other party must acknowledge that the proposal is too high and then present factual arguments developed during the technical and cost analysis of the proposal to make certain that proper reductions are made.
- \* Separation. In some cases, a negotiator may allow a team member to present an extreme position to the other party to test the reaction. When the negotiator senses strong opposition, he or she may simply point out that the position being presented is the team member's own argument and certainly the negotiator does not expect the other party to agree with all points being made. The separated team member is used as a tactic, to test the waters. The negotiator should arrange this approach in advance with the affected team member.
- \* Surprise. This strategy involves a sudden shift in position or approach. The change should be drastic and dramatic. Sometimes appointing a new discussion leader can make the point. The other side may feel that they will have more success reaching agreement with the new leader if they perceive that person as being more reasonable.
- \* Withdrawal. This strategy is used to try to convince the other party that a point under discussion is not really very important. The first party might innocently appear to lose interest in an item when, in reality, that party has conceived of a method to get its way later in the negotiation. This tactic requires good memory and perhaps some acting talent.

9.4.3 When planning your strategy, limit it to only a few techniques. You must maintain your integrity. Remember that the Contractor's objective is maximum Profit (Price - Cost) and the Agency's Objective is a fair and reasonable Price (Cost + Profit).

## CONDUCT OF NEGOTIATION

9.5 Negotiation actually begins when an RFP is issued. Any subsequent discussion of the RFP can contribute to the negotiation. Members of the negotiation team and all Agency personnel must be cognizant that anything said may be used by the parties in negotiation. Such discussion allows the parties to probe for issues that will need attention in order to reach a complete and mutual understanding of the services required.

9.5.1 If properly prepared with Negotiation Objectives, formal negotiation is a matter of adhering to your agenda. When discussion drifts; refocus. Remain cognizant of where you are in the bargaining process at all times. Do not lose sight of your specific objectives even when many interrelated issues may be addressed at the same time. Use your planned strategies and be prepared to use others. Recess if necessary to make any significant adjustments to your position.

9.5.2 In addition to the use of strategy, the following guidelines are suggested:

- \* recognize and take advantage of each opportunity to bargain.
- \* obtain something in return for each concession.
- \* when you change a position, be sure that the new position is acceptable.
- \* when stalemates occur, put the issue(s) aside for a time; consider an independent expert (e.g. Auditor or Engineer), or call a recess.
- \* remember that winning at negotiations does not mean beating the price down to some unreasonably low level. Such a price may result in shoddy services. Also, if administration becomes excessive, that cost may not appear in the contract, but it will increase the Agency's overall cost.

9.5.3 After terms and conditions, services, effort, schedule, work products and cost estimates are decided, the last issue to negotiate is the Final Price and Method of Payment. Negotiation of Price and Method of Payment are closely related and should be considered together. The objective is to negotiate a contract that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance. Prior to negotiation, when developing the Agency Fee Objective (Chapter 8), you selected a preferred Method of Payment. However, negotiations may have changed your perception of the contract and a different Method of Payment may now be more appropriate.

- \* Fixed Price Methods (FFP or FPPE) best utilize the basic profit motive of business enterprise and should be used when the risks and uncertainties involved are minimal or can be predicted with an acceptable degree of certainty.
- \* Cost Reimbursement methods (CPFF or T&E) should be used when performance "uncertainties" or the likelihood of changes makes it difficult to estimate cost in advance. The method chosen should place a reasonable cost responsibility on the Contractor and appropriately tie Fee to Contractor performance.
- \* For some contracts, circumstances may make different methods of payment appropriate. A single



Method payment in each contract is the desirable objective; however, combinations of methods in order to create a contract that best fits the performance requirements, are allowable. For example, design projects may be performed in phases. The first phase of a project might cover the development of program requirements and be paid for under Cost Plus Fixed Fee. Then follow-up design could be negotiated on the basis of information developed in the first phase and might be accomplished under a Firm Fixed Price. Alternately, we might obtain a Fixed Price for some work products or phases of a project, but settle on a Cost Reimbursement Method for the remainder of the contract. The inherent problem associated with mixed methods of compensation within a single contract is the possibility of double charges -- such as when an expense for a Fixed Price work product may be charged to a Cost Reimbursable work product. When using mixed Methods of Payment for different tasks, ensure that they will not be performed concurrently, thereby reducing the potential for "double charging". Such contracts require very stringent review of billings and auditor assurance that the Contractor's cost accounting system is capable of segregating costs for the different efforts.

**9.5.4 Agency personnel and the Negotiation Team must be vigilant to ensure that information derived from competing proposals is not disclosed to competing Offerors (AS 36.30.240) until after Notice of Intent to Award (AS 36.30.365) is issued (AS 36.30.230).**

9.5.5 Commonly, the first negotiation meeting will not completely resolve all concerns or problems raised. Prior to scheduling and conducting follow-up sessions, a clear understanding of the items to be addressed by each party must be reached. Contractor and Agency preparation for succeeding sessions will depend on the nature, magnitude and number of areas in question after the first negotiation session. If there are significant differences, a complete new proposal could be requested. If the differences are isolated to specific areas, just those areas would be revised and discussed at a follow-up session.

9.5.6 If an agreement cannot be negotiated with the first ranked Contractor, negotiations should be terminated. Negotiations should then be initiated with

the next ranked Contractor and so on, until an agreement is reached. *Once negotiations have been terminated with a firm and begun with another, they cannot be reopened with the former firm.* (Also see AC 150/5100-14C, para 2-13(d).)

## COMMON DIFFICULTIES

9.6 Negotiators who are alert for the following common difficulties in negotiations may be able to avoid or minimize the disruption they cause.

- \* Defensiveness by either party about their proposals or estimates when one or the other has identified flaws or misunderstandings.
- \* Tendencies for negotiations to become a "design session" rather than address the services required.
- \* Defense by "smoke screening" such as when the Contractor may focus on sheet counts that support unrealistic hour per sheet estimates or an attempt to negotiate total price as a percentage of estimated construction costs. Note that these and other general guides may prove valuable for testing the validity of estimates; however, they are not hard and fast rules which support contract estimates.
- \* Inclusion of work not required. This most often occurs when the Agency Statement of Services is not clear.
- \* Unresolved questions about services and/or wide differences in estimates of labor effort required.
- \* Contractor is unable or unwilling to negotiate reasonable Subcontractor costs.
- \* Personality conflicts between negotiators.
- \* Lack of trust.

## RECORD OF NEGOTIATIONS AND SELECTION

9.7 **After negotiations are finished, the principal negotiator must write a Record of Negotiation and Selection (RONS) which explains: your pre-solicitation concept of the services and pre-proposal cost; what the Contractor proposed; what you found out in analysis of the proposal; what happened in negotiations, and why the price and method of payment you agreed to is fair and reasonable.** Chapter 11 explains the RONS.

# Chapter 10

## PROTESTS & APPEALS

### ACTIVITY # 10

Exhibit 10-1 at the end of this Chapter summarizes the Protest/Appeal process.

#### PROTESTS

**10.1 AS 36.30.560** defines three areas where protests concerning the award of a contract may be filed:

- \* Proposed award of a contract.
- \* The award of a contract.
- \* Solicitation for Professional Services.

#### PROTEST PERIOD

**10.2 AS 36.30.565** defines the "protest period" for award or a proposed award of a contract as ten days. The method of computing the ten-day period is that the first day of the protest period is the day following the date a Notice of Intent to Award [FOR SMALL PROCUREMENTS - THE DAY FOLLOWING NOTICE OF AWARD] is dated and dispatched, even though the first day may be a weekend or holiday. Once the first day is identified, the rest of the ten days are calendar days unless the tenth day falls on a holiday or weekend, in which case the close of the ten-day period is the close of business of the work-day following the holiday or weekend.

*10.2.1 If a protest is filed concerning a contract awarded by other than Competitive Sealed Proposals (i.e. by the methods described in Chapters 1, 2, 4, 5 or 6 which do not require a Notice of Intent to Award), the ten day protest period should be considered to have begun on the day following the date the Contractor has been advised to proceed with performance under the contract.*

*10.2.2 In considering whether a protest is filed on a timely basis, the protest must be received within the ten-day period. Protests mailed within the ten-day period but not received within that time period should be considered as untimely. If the protest is delayed by actions of the Agency, so as not to be received within the ten days, you may wish to consider the protest as timely under AS 36.30.565(b). If the protest is untimely, the protester should be notified by the Contracting Officer that said protest is untimely and explain why.*

**10.2.3** Protests pertaining to the contents of the solicitation documents should be considered timely if received in writing at least ten Agency work days prior to the submittal deadline per 2 AAC 12.615(a). **[FOR SMALL PROCUREMENTS - SUCH PROTESTS SHOULD BE CONSIDERED**

**TIMELY IF RECEIVED PRIOR TO THE DATE AND TIME PROPOSALS ARE DUE.]** *This does not mean that a later protest that points out a serious error should be ignored. In that case, the opening date should be delayed and the error corrected or the solicitation canceled, or whatever appropriate action is warranted.*

#### NOTICE OF PROTEST

**10.3** Any protest received should be copied immediately to the appropriate Contracting Officer, who shall immediately give notice of the protest to the Contractor, and all Offerors and other known interested parties if the contract has not been awarded (per AS 36.30.570). *See the file: "protest".*

#### CONTENTS OF THE PROTEST

**10.4** All protests, regardless of the procurement method used, must include the following information:

- \* the name, address, and telephone number of the protester;
- \* the signature of the protester or the protester's representative;
- \* identification of the Contracting Agency and the solicitation or contract at issue;
- \* a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
- \* the form of relief requested.

*10.4.1 If the protest contains no grounds for the protest, it should be rejected by the Contracting Officer.*

*10.4.2 Protests received by a FAX machine bearing a signature should be accepted (AS 36.30.560).*

#### STAYING THE AWARD

**10.5** Following receipt of a protest, the Contracting Officer should, in consultation with the Office of the Attorney General, proceed with the award only under circumstances where:

- \* there is virtually no chance of the protest being sustained; and/or

- \* to delay the award would cause the State serious harm (as opposed to an inconvenience) (AS 36.30.575).

## CONTRACTING OFFICER'S DECISION

**10.6 The Contracting Officer shall issue a written decision which explains the Agency's position within 14 days after a protest has been filed. A copy of the decision shall be furnished to the protester by certified mail or other method that provides evidence of receipt. The Commissioner of DOT&PF may extend the time for the decision up to 26 days for good cause. If an extension is granted, the Contracting Officer shall notify the protester in writing of the date the decision is due (AS 36.30.580).**

*10.6.1 In preparing the decision (response to the protest), as required by AS 36.30.580, be sure to thoroughly research all points raised in the protest. Protests will be received in a variety of formats and will have been prepared by persons with a variety of research and writing skills. Check on those matters that are implied, even though not concisely stated.*

*10.6.2 If you are the person responsible for the solicitation, against which the protest is filed, you may become defensive when responding to the complaints. Under these circumstances it is a natural tendency to defend one's earlier actions rather than realistically evaluate the points raised by the protest. Step back and review the facts from the viewpoint of a neutral third party. You may want to get input from other individuals who have not been associated with the procurement.*

*10.6.3 In preparing the response, speak only to those points raised by the protest. Deal with the facts of the matter as they exist, even if the facts do not support the position you would like to take. It is important to be accurate. It is more important that the decision is reasonable. Be concise in writing the decision. Explain it thoroughly, but avoid extra material or personal philosophy. Do not provide new material with which the protester can take issue.*

*10.6.4 If there was a flaw in the process, determine the impact of that flaw. Did we fail to do something that law or regulation requires? Is the flaw significant to the overall result? Can or should the flaw be repaired or is the flaw a fatal one (requiring the process or a phase of the solicitation or evaluation process to be redone)? Think about the impact that re-solicitation will have if proposals have already been exposed to competitors.*

*10.6.5 If remedial action needs to be taken, admit the fault and explain how you intend to remedy the situation. In formulating a remedy, be fair - not just to the protester - but to all Offerors. Be conservative; do not overcompensate for the error to the detriment of*

*your department and competitors. Explain in your decision the process by which the decision may be appealed and what the appeal period is. Explain that the Contracting Agency must receive any appeal within the ten-day appeal period. The ten-day appeal period is computed just like the protest period. Although not required by statute or regulation, it is good policy to send a copy of your decision to all parties to whom you sent a copy of the protest.*

*10.6.6 The fourteen days you have to prepare and mail (utilize registered mail and request a receipt of the delivery date) the Contracting Officer's decision are counted in the same manner as the protest period. The date of receipt of the decision by the protester determines the dates of the appeal period. Keep the receipt. If the decision is appealed, you may be asked to furnish the receipt.*

## PROTEST REMEDIES

**10.7 In determining an appropriate remedy for a sustained protest, the Contracting Officer shall consider the circumstances surrounding the solicitation or procurement including the seriousness of the procurement deficiencies, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent the procurement has been accomplished, costs to the Agency and other impacts on the Agency of a proposed remedy, or the urgency of the procurement to the welfare of the state (AS 36.30.585(b)).**

## APPEAL OF A CONTRACTING OFFICER'S DECISION REGARDING A PROTEST

**10.8 [FOR SMALL PROCUREMENTS, THE CONTRACTING OFFICER'S DECISION IS FINAL, APPEALS SHALL NOT BE RECOGNIZED.]**

**10.9 Within ten days after the protester receives the Contracting Officer's decision, they may file an appeal with the Commissioner of the DOT&PF. The protester shall also file a copy of the appeal with the Contracting Officer (AS 36.30.590).**

**10.9.1 The Contracting Officer shall immediately give notice of an appeal to the Contractor if a contract has been awarded or, if no award has been made, to all Offerors and other known interested parties as defined in 2 AAC 12.990(a)(7).**

**10.9.2 If a protest appeal is filed before a Contract is awarded and the award was stayed under AS 36.30.575, the filing of the appeal automatically continues the stay until the Commissioner makes a written determination that the award of the contract without further delay is necessary to**

protect substantial interests of the state (AS 36.30.600).

#### **PROTEST REPORT**

10.10 The Contracting Officer shall file a complete report on the protest and decision with the Commissioner DOT&PF and the Chief Contracts Officer within seven days after a Protest Appeal is filed.

10.10.1 The Contracting Officer may request an extension of time to prepare the protest report. The request must be in writing listing the reasons for the request and shall be directed to the office of the Commissioner of DOT&PF (AS 36.30.605(b)).

10.10.2 The Contracting Officer shall furnish a copy of the report to the protester and to any interested parties that have requested a copy of the appeal under AS 36.30.595(b) per (AS 36.30.605(a)).

#### **ACTION ON APPEALS**

10.11 *Protest Appeals are administered by the office*

*of the Commissioner of DOT&PF in accordance with AS 36.30. Further action at the DOT&PF Division or section level or by other Agencies with DOT&PF Delegation of Authority for construction procurement, is not required and thus not addressed in this handbook.*

#### **CONTRACT CONTROVERSIES**

10.12 If a contract controversy asserted by a Contractor cannot be resolved by agreement, the Contracting Officer shall, after receiving a written request by the Contractor for a decision, issue a written decision within ninety (90) days after receipt of all necessary information from the Contractor. The Commissioner may extend this time period. The Contracting Officer shall furnish a copy of the decision to the Contractor by certified mail or other method that provides evidence of receipt. The decision shall include the requirements of AS 36.30.620. If a controversy cannot be resolved by agreement the matter shall be immediately referred to the Commissioner of DOT&PF (AS 36.30.620).

# Chapter 11

## RECORD OF NEGOTIATION AND SELECTION (RONS)

### ACTIVITY # 11

11.1 *The Record of Negotiations and Selection (file: "rons") documents all actions and decisions made in the Contractor selection and negotiation processes for an Agreement or Amendment. It also fulfills requirements of the following statutes and regulations.*

- \* **AS 36.30.250(a) - Basis for Award**
- \* **AS 36.30.362 - Basis for Award to Non-Resident**
- \* **AS 36.30.510 - Summary of Contract File**
- \* **2 AAC 12.300 - Basis of Selection Most Advantageous to the State**
- \* **2 AAC 12.400(a) & (d) - Records to Facilitate Auditing of Small Procurements**
- \* **49 CFR 18.36 (b) (9) - Record of Rationale for Contract Type, Contractor Selection and Basis of Price**
- \* **23 CFR 172.7(a)(4)(iii) - Record of Negotiation Activities and Resource Considered**
- \* **FAA AC 150/5100-14C, para 2-13(e) - Record of Negotiation**

The RONS explains the pre-solicitation concept and price; what the Contractor proposed; what analysis of the proposal produced; what happened in negotiations; and, why the price and method of payment is fair and reasonable.

11.2 For Small Procurements, 2 AAC 12.400(d) requires a summary of the responses (proposals received) and a justification for the award signed by the Contracting Officer. The file: "rons" or another document that contains similar information may be used for this record.

11.3 A Record of Negotiations and Selection must be prepared for each of the following "types of procurement:"

- \* **Competitive Sealed Proposals.**
- \* **Amendments to contracts awarded under Small Procurements or Competitive Sealed Proposals, if services or compensation is changed in any manner.**
- \* **Notices to Proceed (NTP) issued under a Term Agreement.**
- \* Changes to the Period of Performance or to task's schedules do not require a RONS.
- \* Changes to the Contractor's or any Subcontractor's Indirect Cost Rates that occur in accord with terms contained in Appendix C of a contract do not require an Amendment or a RONS, *unless the percent change requires an adjustment of the contract price and/or cost estimates.*

11.4 The file: "rons" requires a distinct, contract specific response to each item. Instructions are provided for the proper completion of each response and to serve as a checklist for staff and Contracting Officer review before approval and signature.

11.5 Second only to the Agreement itself, the RONS is the most important document prepared for a negotiated contract.

#### 11.6 FAA Contracts:

AC 150/5100-14C, Paragraph 2-13.h requires that the record of negotiations and all attachments be submitted to the FAA for a reasonableness of cost determination.

The attachments per AC 150/5100-14C, paragraph 2-13.e, are the scope of work, draft contract, sponsor's independent cost estimate, consultant's cost proposal with any revisions and detailed cost analysis.

# Chapter 12

## PROFESSIONAL SERVICES AGREEMENTS (PSA)

### ACTIVITY # 12

**12.1 For Agreements of \$5,000 or less no written solicitation or standard Agreement is required. However, there must be some written authorization from the Contracting Officer and a letter, acknowledged in writing by both parties, which describes the services, period of performance and compensation is recommended.**

**12.2 Agreements of \$100,000 or less may consist of the documents listed in paragraph 12.3, below - OR - the following Small Procurements Documents for Construction Related Professional Services [RFP, Proposal & Award] that are designed for electronic transmission.** The Standard Provisions Booklet listed below is an assembly - incorporated by reference in the Small Procurement Documents - of current materials used for contracts that exceed the Small Procurement Limit.

- \* Small Procurements Documents, Part A - Request for Proposals (file: "spdocs-a").
- \* Small Procurements Documents, Part B - Proposal Form (file: "spdocs-b").
- \* Small Procurements Documents, Part Contract Award & Notice to Proceed (file: "spdocs-c").
- \* Standard Provisions Booklet (file: "spspb").

**12.3 Agreements exceeding \$100,000 shall consist of the following documents (the file: "ins-psa" provides detailed instructions for preparing and assembling a Professional Services Agreement):**

- \* *Basic Agreement, DOT&PF Form 25A261 (file: "psa").*
- \* **Appendix A, General Conditions for Professional Service, DOT&PF Form 25A262 (file: "psa-a").** Page 7 of this form provides for identification of any additional conditions which may be necessary; however, such additional conditions shall not diminish the requirements of any Articles contained in the form in any way, except as may be approved in writing by the Department of Law (AS 36.30.340).
- \* *Appendix B, Statement of Services, plus any Exhibits (e.g., schedules, drawings), must be prepared by the Contract Manager and shall establish the various phases, tasks, or elements of the services to be provided and must be written so as to identify specific milestones which may be*

*used to schedule and manage contract performance and on which compensation to the contractor can be negotiated and paid. Chapter 7 and the file: "ins-sos", provide detailed information about preparing a Statement of Services (SOS). Your Professional Services Coordinator may have some "standard" types of SOS developed for services routinely obtained and which are designed to be edited for specific Agreements. A Contractor's proposal may not be used as Appendix B.*

- \* *Appendix C, Basis of Compensation, DOT&PF Form 25A280 (file: "psa-c"), plus the Exhibits specifically prepared for each Agreement. See the file: "ins-psa" for detailed instructions for preparing and assembling Appendix C, Basis of Compensation.*
- \* *Appendix D, Indemnification and Insurance, DOT&PF Form 25A269 (file: "psa-d"), plus Certificates of Insurance for all required coverages.*
- \* *Appendix E, Certification of Compliance, Alaska Licenses/Registrations and Insurance (file: "psa-e").*
- \* *Additional Appendices as may be appropriate.*

**12.4 Read Article A16, Predominance of Documents, contained in Appendix A, General Conditions before preparing/writing the contract documents. Note that Appendices which follow Appendix A cannot change any of the provisions of the basic Agreement or of Appendix A. Also note that any modifications to the standard forms of the Agreement must be approved by the state Attorney General's Office.**

**12.5 Current Certificates of Insurance for the prime Contractor shall be obtained prior to contract execution from the insurance carriers (ref.: AS 23.30.045(d)). Copies of the certificates shall be attached to Appendix D of each contract to document the required coverages (which are detailed in Appendix D).**

**12.6 The requirements for insurance as indicated on Form 25A269 may be modified if approved by the Contracting Officer. Identification and justification of changes to insurance requirements must be noted on page 2 of the form with the Contracting Officer's signature of approval at the bottom of the page. If modifications are not based on one of the preprinted**

*certifications, an attached justification must fully and clearly demonstrate that the Contracting Agency will not incur any liability, or is at little risk of liability, as a consequence of the Agreement. See the file: "ins-psa" for instructions.*

*12.7 Agreement Documents shall be prepared and executed as follows:*

*12.7.1 All agreements exceeding \$5,000 require an Agreement Number that shall be assigned by your Professional Services Coordinator following his/her review of the Agreement package.*

*\* Note: Procedures for the review process and assignment of a number may vary in each DOT&PF Region or System and other Agencies with DOT&PF Delegation of Authority.*

*12.7.2 In most circumstances, two copies of the Agreement should be first executed by the Contractor and then they will be provided to your Professional Services Coordinator accompanied by the appropriate*

*checklist and other documents identified in Chapter 13 - Contract Records.*

*12.7.3 The Professional Services Coordinator shall submit both copies of the Agreement and one copy of the Record of Negotiations and Selection (RONS) to the Contracting Officer for signature.*

*12.7.4 If the Contracting Officer does not execute and return the Agreement and the RONS within one week of the transmittal for signature, the Professional Services Coordinator will inquire regarding the document status and will notify the Contract Manager of any delay and the reason for it. The Contract Manager will notify the Contractor immediately in writing if the contract will not be executed.*

**12.8 Effective date of an Agreement is the last date signed by any of its parties.**

*12.9 Following execution of an Agreement, the Contract Manager will receive one originally signed copy to be given to the Contractor. Photocopies of the Agreement should be kept for project files.*

# Chapter 13

## CONTRACT RECORDS

### ACTIVITY # 13

13.1 *Agreements (exceeding \$5,000) and Amendments (regardless of amount) must be provided to your Professional Services Coordinator with a completed Documents Checklist and copies of related procurement records, prior to execution by the Contracting Officer.*

13.2 Checklists to be used are contained in the following files:

- \* "clst-sp" Documents Checklist for Small Procurement ( $> \$5,000 \leq \$100,000$ )
- \* "clst-csp" Documents Checklist for Competitive Sealed Proposals
- \* "clst-emr" Documents Checklist for Emergency Procurement
- \* "clst-lcs" Documents Checklist for Limited Competition Procurement or Single Source Procurement
- \* "clst-ntp" Documents Checklist for NTP under

Term PSA

- \* "clst-amd" Documents Checklist for Amendments
- \* "clst-end" Checklist for Closing out PSA

13.3 *The Agency's master file of active Professional Services Agreements, including an originally signed copy of each Agreement and Amendment, will be maintained by your Professional Services Coordinator. Work copies may be retained in project files for daily use. After a contract is completed, the master files will be retained in accordance with paragraph 13.4, below.*

13.4 *Records pertaining to 100% state funded Agreements for Professional Services will be retained in regional and systems contract files for a minimum of three years after final payment to the Contractor. Records pertaining to Agreements with any federal funding will be retained for a minimum of three years after the final voucher for federal aid reimbursement has been paid by the federal funding agency.*



# Chapter 14

# ENCUMBRANCE

## ACTIVITY # 14

**14.1 All Basic Agreements plus any Amendments, which alone or together exceed \$5,000, must be encumbered (funding set-aside for the Agreement). Each Term Agreement Notice to Proceed that exceeds \$5,000 must also be encumbered.**

14.2 The file: "encumber" is a sample memo for requesting encumbrance.

14.3 In order for the encumbrance system to function best, you should include the encumbrance number with each invoice when submitting it to accounting for payment.

# Chapter 15

## CONTRACT MANAGEMENT

### ACTIVITY # 15

15.1 Approved methods and techniques to manage construction related Professional Services Agreements (PSAs) and the Contractors who perform these services are noted in the following discussion. While portions of this Chapter are intended to serve as teaching aids, those portions of the text which appear in **bold** or *italic* print styles shall be followed without exception.

15.2 Management Methods: *Limited to: a) in-house management or b) the use of Contractors to manage other Contractors under Agency direction.*

15.2.1 In-house management provides direct Agency control over a Contractor's activities. A single individual can effectively manage agreements that have straightforward scopes or are closely related to one another. However, large scale, complex or long-term construction projects, may necessitate that a Contract Manager be assigned to only one such project. In-house consultant management staff should consist of experienced multi-disciplined personnel who are knowledgeable about the Agency's methods, standards, procedures, and organization.

15.2.2 The use of Contractors to manage other Contractors (Management Contractors) allows state agencies to respond quickly to large program increases to provide both technical and administrative management functions. This is particularly useful when the Agency lacks sufficient qualified staff to manage these functions for a large construction program. Potential disadvantages are: higher costs, extended Agency liability, reduced Agency control and the increased possibility for misunderstandings.

\* *Note: Unless otherwise approved in writing by the Commissioner of DOT&PF, construction contract administration - other than site inspection, review of shop drawings, materials inspection and acceptance, and design clarifications - shall not be performed by the Designer due to the potential for conflicts of interest. The Designer shall not be used to effect construction change orders or authorize payments to the construction contractor.*

15.3 Management Techniques: *Contracting Agency shall utilize techniques that will ensure adequate oversight of the Contractor with respect to contractual and project specific requirements.*

15.3.1 Contractual: *Contract Manager (who may also be the Agency's Project Manager) is responsible for administration and management of the Agreement and to insure that services provided are complete, accurate and consistent with terms of the Agreement.*

\* *Note: In this Chapter, references to specific*

contractual requirements are designated by square brackets [ ]. For example, Article A7.2, appearing in Appendix A and pertaining to "authorization to proceed with work", is referenced as [A7.2].

15.3.2 All contractual requirements governing the Agreement are contained within the Appendices A through E of the Agreement. Effective administration requires a complete working knowledge of these documents. As nearly every Agreement is unique to itself, the Contract Manager must be familiar with the specific requirements for that Agreement.

15.3.3 *Work to be performed under an Agreement can only be authorized by a written Notice to Proceed (NTP) issued by the Contract Manager [A7.2].* NTPs may be issued to authorize all services under an Agreement, or several consecutive NTPs may be issued to establish separate cost control for different phases. The files: "c2-ntp" or "c3-crntp", or a similar form must be used. The issued form is copied and submitted by the Contractor with each invoice. Use of the form readily identifies the Agreement, project, and funding information needed to process the invoice.

\* *Note: Generally, only one Notice to Proceed should be issued for Agreements less than \$250,000 because each NTP requires the Contractor to set up a separate Cost Account for that NTP. For Agreements exceeding \$250,000, the number of NTPs should generally not exceed six (see the files: "ins-psa" and "ins-est" for more information). If the Contract Manager wants to further control expenditures or performance of services under the NTP, that may be done with separate correspondence that instructs the Contractor accordingly.*

\* *Note: All prior NTP/Invoice Forms are being phased out so as to provide uniformity in contract language when referring to price, cost, and fee (profit). Any questions concerning their use should be directed to your Professional Services Coordinator.*

15.4 Project Specific Conditions: *Contract Manager responsibilities consist of the following:*

\* *Establishing and adhering to an orderly system of tracking and controlling the documentation required to assure proper completion of the Agreement.*

The Contracting Agency must maintain a contract file available for inspection by authorized representatives of the state, federal government and the Contractor for the purpose of making audits, excerpts, transcriptions, or examinations. This file is generally composed of a combination of the PSA Coordinator's files and those files maintained by the Contract Manager. In addition to the documents transmitted to your Coordinator (as

described in Chapters 1 through 5 and paragraph 6.9.5 in Chapter 6), the Contract Manager's file shall also include:

- a. correspondence, directives, and amendments,
- b. meeting notes and progress (monitoring) reports,
- c. local authority/jurisdiction resolutions,
- d. performance evaluation reports,
- e. billings,
- f. documents required by the contract provisions (EEO certifications [A6.1], subcontracts [A19.1], and so forth),
- g. project related correspondence from the Internal Review Section (exclusive of confidential material), and
- h. claims.

*\* Scheduling and attending progress meetings with the Contractor. Monitoring work progress at least monthly.*

Regular meetings should be conducted with the Contractor to assure the milestones established in the contract Statement of Services and the performance schedule are achieved. As necessary, additional conferences between the Contractor, the Agency, and other appropriate staff should be conducted.

*\* Obtaining Progress Reports from the Contractor, evaluating them, and taking appropriate action. A process for reporting status to upper management should be a part of the system.*

The Contractor should be required to submit written Progress Reports, at least monthly, in an Agency approved format. The reports should include at a minimum: status of events and activities described in the Agreement, summary of work performed during the report period, discussion of any problems and how they were - or will be - resolved, plans for the succeeding period, and any deviation from estimated costs. Exhibit 15-1 is a sample format.

*\* Monitoring the qualifications and work assignments of the Contractor's assigned staff. Recommending or approving substitution of personnel [A19.1].*

All services must be performed by or under the direct supervision of the project staff named in the Agreement or others approved by the Contracting Agency. Only prior written approval from the Agency's Contract Manager shall allow replacement of, or addition to, the named Project Staff. If the Contractor requests a change in key personnel, the Contract Manager shall review individual's qualifications and credentials and ensure that they are sufficient.

*\* Visiting the project and/or Contractor's office on a frequency that is commensurate with the magnitude, complexity and type of work; monitoring the daily activities and records of the Contractor [Article A9].*

Visits to the Contractor's office allow the Contract Manager to become familiar with the firm and staff, and to review and verify contract progress. This will foster

development of a good working relationship between the Agency and Contractor. Such visits may be announced or unannounced, but must be within normal business hours [A10.1].

*\* Reviewing all work products and services for conformance to the Agreement: general conditions, services, schedule, and budget. The Contract Manager is responsible for monitoring the performance schedule - and if delays occur - ensuring that the Agreement completion date is extended appropriately. Agreements that are not extended PRIOR TO THEIR EXPIRATION DATE are defunct and will require a Single Source Waiver in order to be re-established.*

Consider a system which will allow the Contract Manager to track project status on a time-line format tied to task completion, deliverables, and funding resources. The system may be computerized to ensure timely updates on an as needed basis.

*\* When services include the preparation of design documents, ensuring that a comprehensive review of drawings and specifications is accomplished. As required under Chapter 4-60 of the Preconstruction Manual, the Contract Manager shall certify, in writing and prior to advertising the bid documents, that the review was performed and that all revisions/actions necessary to facilitate adjudication of review comments were properly accomplished.*

*\* Issuing timely clarification and instructions that address discrepancies or omissions in the Agreement or in the work products or services provided by the Contractor. Negotiate and obtain execution of contract Amendments (see Chapter 16) when changes are necessary. Do not allow changes to accumulate such that cost control for the changes may be lost. Any change or revisions in the services, complexity, character, duration of services or provisions of the Agreement shall be documented with the standard Amendment form (file: "amd"). Agreements that were awarded based on Small Procurement Procedures may not be increased above the statutory limits unless a Single Source Waiver (see Appendix A) for the revised total Agreement amount is approved.*

*\* Coordinating post design activities and services when required by the Agreement.*

If required by the Agreement, the Contract Manager must assure that the Designer will be available during the construction phase to promptly answer questions and address issues concerning the project design intent. The Contract Manager should ensure that communication between the Contractor, the Agency Construction Manager, and construction staff is facilitated. This will allow problems to be resolved quickly and at the lowest possible level and at the least cost. If the Agreement does not include provisions for the Designer to review shop drawings and respond to design issues during construction, then a contract Amendment to include these services should be considered.

\* *Reviewing and recommending (or approving if so authorized) payment of Contractor's Invoices.*

Review of billings should not simply be limited to the Contractor's math skills. The Contractor's performance should be compared against requirements of the Agreement. Timeliness, degree of completion, and quality of work, should be considered when determining validity of the invoice and monetary amount of the payment. See paragraph 15.4 for additional details.

Billings that are subject to review commensurate with the completion of project "milestones" (e.g. facility programming, final EIS, bid documents, etc.) *shall also be subject to periodic performance evaluations (file: "perf-evl")*. Meetings regarding the Contractor's performance should be held in connection with these periodic written evaluations to provide constructive feedback and encourage communications and improvement.

\* *Following completion of the Agreement prepare a Performance Evaluation (file: "perf-evl") which is substantive and fully addresses nonperformance or other contractual problems. A copy of the evaluation shall be sent to the Contractor for review and/or comments. Any written comments from the Contractor shall be attached to the final evaluation.*

This final evaluation shall be based upon the periodic evaluations provided at each milestone of the project. In the absence of periodic evaluations the Contract Manager may base the evaluation on correspondence or other non-verbal communications to the Contractor. Final evaluations, which cannot be substantiated by prior, written documentation, shall be reviewed with the Contracting Officer before issuance.

**15.5 Payments shall be made in accordance with FMOM 04.05.010** (see Appendix B in this Manual) *and the Agreement provisions and shall be only for work successfully completed. Prior to submitting an invoice for payment, Contract Manager will ensure that costs billed are consistent with the acceptability and progress of the Contractor's work.*

15.5.1 *Contract Manager must perform an analysis of the invoiced costs compared to the acceptability and work progress/accomplishments during the invoiced period. The following certification shall appear on all approved payments: "I certify this invoice to be valid and accurate and that services were performed substantially in conformance with the Agreement requirements and schedule." The Contract Manager will sign the certification and affix the necessary accounting codes. If the Contract Manager does not have authority to approve invoices for payment, then another Agency*

*Official in the Manager's chain-of-command who has a Delegation of Authority from the Contracting Officer must also sign the invoice to approve its payment. (DOT&PF Finance Offices maintain signature cards for Authorized Agency Officials).*

*Additionally, the Contract Manager is required to complete a brief Performance Evaluation for the work included in the invoice when the covered work coincides with the completion of a project milestone (see previous discussions).*

15.5.2 If a Contractor invoices for 25 percent of the Agreement amount in the first billing period and has completed only 10 percent of the services, you can expect that the remainder of the services will receive only 75 percent - rather than 90 percent - of the total anticipated effort for the Agreement.

15.5.3 *If the payment method is other than Fixed Price, then work shall be reviewed when approximately 75% complete to determine adequacy of the maximum amount of compensation.*

15.6. Contract Amendments, their applicability, development and execution are covered in detail within Chapter 16. The Contract Manager shall ensure that all work is covered under the Agreement, be it in the original Agreement or by Amendment. *Invoiced work, not authorized in writing, is ineligible for payment [Article 7].*

15.6.1 *Contract Amendments for overruns in the estimated effort or costs of the work shall not warrant an increase in the fee portion of a Cost Reimbursement Agreement. Significant changes, however, to the Agreement services may require adjustment by Amendment of the Fee portion in a Cost Reimbursement Agreement or in a Fixed Price Agreement. Amendments may also be required to effect payment adjustments due to changes in Indirect Cost Rates (IDCRs) in accordance with the provisions of Appendix C in the Agreement.*

15.6.2 The Contract Manager is responsible for assuring that any work outside of the originally solicited and intended "Statement of Services" is authorized in accordance with the requirements of the State's procurement code. Typically, such additional work includes tasks that were not identified in the Request for Proposals or documented in writing during the negotiating process. *This non-scoped work must be handled as a Supplemental Agreement as noted in Chapter 16. (See specifically section 16.1.3, Unanticipated Amendments.)*

15.7 Contract Closeout requirements are addressed in Chapter 17.

# Chapter 16

## AMENDMENTS

### ACTIVITY # 16

16.1 Amendments can be divided into two basic types: anticipated and unanticipated.

16.1.2 Anticipated amendments are planned at the time of procurement. They are addressed in the RFP and/or the executed Basic Agreement and in the contract Record of Negotiations and Selection. Most anticipated amendments involve contract time extensions or phased project development. *Reference to potential amendments may not be written so as to circumvent statutory requirements for competition.*

16.1.3 Unanticipated amendments must meet the following constraints:

- Legitimacy: *A legitimate change is due to unforeseen circumstances or predicaments which occur as work progresses and is not an effort to evade the statutory requirement for competition or other requirements.*
- Services: *Must be within the intent and purpose of the original contract and RFP.*
- Extent: *No change may be made which alters the essential identity or main purpose of the original contract or is of such importance as to constitute a new undertaking. Amendments that include Supplemental Agreements (any change that is outside the originally stated objectives of the Basic Agreement, e.g., adds other project(s) or new task(s) that are not logical and legitimate consequences of the original agreement), or are of such magnitude that they substantially change the originally stated objectives of the Basic Agreement, require a Waiver (Appendix A) by the Commissioner.*

16.2 *Agreements which were awarded based on Small Procurement Procedures may not be increased above the statutory limits unless a Single Source Waiver (see Appendix A) for the value of the additional task is approved.*

16.3 *Activities that must be accomplished for each Amendment include:*

- *If a price increase, identify funding source(s), AKSAS Ledger and Collocation Codes.*
- *Prepare a written explanation of the change(s) -- may be done by either party.*
- *Develop or obtain an Independent (not from the Contractor) cost estimate.*
- *Obtain a Price Proposal from the Contractor. (Contractor's proposal preparation cost may be charged to the contract if the cost is negotiated into the amendment.)*
- *Next perform a Cost Analysis and negotiate a fair and reasonable price (Chapters 8 - 9).*
- *Prepare Amendment (file: "amd") and obtain the Contractor's signature. If the total price or any items of payment are changed (including any "re-allocation" of funding), also prepare a Record of Negotiations and Selection (file: "rons").*
- *After RONS and PSA are prepared, assemble and transmit a complete set of procurement documents to your Professional Services Coordinator as instructed by the Documents Checklist for Amendments (file: "clst-amd"). Keep a copy of all materials for your project files (see Chapter 13).*
- \* *Note: Your Professional Services Coordinator will at this time review the RONS, Amendment and other Documents to identify any necessary revisions that must be made. If not already done, the Contractor must sign two copies of the Amendment. The Coordinator will then obtain a Contracting Officer's signature on both copies of the Amendment and a copy of the RONS. One of the originally signed copies of the Amendment will be returned to the Agency's Contract Manager to reproduce for project files and to transmit to the Contractor with a Notice to Proceed in accordance with Chapter 15.*
- *Change the amount encumbered for the PSA to include the Amendment.*

## Chapter 17

# CONTRACT CLOSE-OUT

### ACTIVITY # 17

*This process is not required for Professional Services Agreements less than \$5,000.*

17.1 *Within 90 days after final acceptance of all services under the Agreement, the Contract Manager will obtain the Contractor's final invoice and a Release from Agreement (file: "release"), signed by the Contractor pursuant to the Agreement. If the final billing and release is not received within the 90-day period, the Contract Manager shall provide the Contractor with a Letter of Closeout (file: "ltr-clos").*

\* *Note: The Release from Agreement form also includes a DBE Certification of Completion which must be completed if the Contractor proposed the use of DBEs in their offer or if the Contractor actually utilized a DBE even though the original proposal did not indicate the use of DBEs.*

17.2 *Contract Manager may complete a Final Performance Evaluation (file: "perf-evl") and provide a copy to the Contractor. If the Contractor submits any rebuttal, resolve any alleged factual discrepancies and*

*make appropriate changes in the Evaluation. Obtain supervisor's signature on final report.*

17.3 *If any funds remain encumbered after final payment is made, Contract Manager should request that the accounting section release the remainder of the encumbrance.*

17.4 *Within two weeks after execution of the Release from Agreement or Letter of Closeout, provide a completed copy of the Release from Agreement - or a statement containing the DBE information required by the form - to the Title VI Specialist in the DOT&PF Civil Rights Office.*

17.5 *Within two weeks of execution of the Release from Agreement or Letter of Closeout, transmit a set of procurement documents to your Professional Services Coordinator as instructed by the Documents Checklist for PSA Closeout (file: "clst-end"). Keep a copy of all material for your project files.*

## Chapter 18

### ALPHABETICAL LIST OF FILES

<u>File Name</u>	<u>File Description</u>
aa-intro	Introduction to RFP&PSA Files
act-clst	Activity Checklist for Competitive Sealed Proposals (scoping thru contract award)
addendum	Addendum to RFP Package
adver	Advertisement for RFP Package
amd	Amendment form
asps	Authority to Seek Professional Services
auditreq	Memo requesting pre-award Audit
c1-pay	Exhibit C-1, Method(s) of Payment
c2-4-amd.xls	Three forms in this Excel file <b>for Cost Reimbursement &gt; \$250k</b> :
[c2-crest]	Exhibit C-2, CR Price Estimate
[c4-crbil]	Exhibit C-4, CR Billing Detail Form
[c2-cramd]	Revised Exhibit C-2, CR Price Estimate Amendment
c2-ntp	Exhibit C-2, Notice to Proceed (NTP) & Invoice Summary <b>for Fixed Price OR Cost Reimbursement ≤ \$250k</b>
c3-crntp	Exhibit C-3, CR NTP & Billing Summary <b>for Cost Reimbursement &gt; \$250k</b>
clst-amd	List of Documents required for an Amendment file
clst-csp	List of Documents required for a Competitive Sealed Proposals file
clst-emr	List of Documents required for an Emergency Procurement file
clst-end	List of Documents required for closing out a PSA
clst-lcs	List of Documents required for a Limited Competition or Single Source Procurement file
clst-ntp	List of Documents required for a Notice to Proceed under a Term Agreement
clst-sp	List of Documents required for a Small Procurement > \$5k ≤ \$100k file
encumber	Memo requesting encumbrance of contract funding
estimate.xls	Two forms in this Excel file:
[estimate.tsk]	Thirty Individual Task Estimate sheets
[estimate.sum]	One Price per Task Summary sheet
evl-memo	Memo to Evaluators
evl-rate	<u>Evaluator</u> Rating Sheet (1 each Evaluator)
evl-rpt	Committee Evaluation Report
evl-scor	<u>Committee</u> Score Sheet (1 each Offeror)
feewksht	Fee (profit) Worksheet
ins-char	Instructions for Evaluation Committee Chairperson
ins-comm	Instructions for Evaluation Committee
ins-est	Instructions for Using Excel Price Estimate & PSA Appendix C Forms
ins-psa	Instructions for Preparing a PSA
ins-rfp	Instructions for Preparing RFP Package
ins-sos	Instructions for preparing Statement of Services (SOS) - Appendix B in a PSA
instruct	Instructions for Using RFP&PSA Files
ita	Letter for Notice of Intent to Award
itn	Letter for Notice of Intent to Negotiate
ltr-clos	Letter for Closeout of PSA
perf-evl	Performance Evaluation
preaudit	Pre-Audit Statement
preneg	Letter for Prenegotiation Requirements
protest	Letter for Notice of Receipt of Protest
psa-a	PSA, Appendix A, General Conditions
psa-c	PSA, Appendix C, Compensation
psa-d	PSA, Appendix D, Indemnification & Insurance
psa-e	PSA, Appendix E, Certification for Licenses & Insurance
psa	Professional Services Agreement (basic 2 page document)
release	Release from Agreement & DBE Certification of Completion
rfp-a	RFP, Part A (RFP)
rfp-b	RFP, Part B (Submittal Checklist)
rfp-c	RFP, Part C (Evaluation Criteria)
rfp-d	RFP, Part D (Proposal Form)
rons	Record of Negotiation and Selection
sp-adend	Small Procurement Addendum
spdocs-a	Small Procurements Documents, Part A - Request for Proposals
spdocs-b	Small Procurements Documents, Part B - Proposal Form
spdocs-c	Small Procurements Documents, Part C - Contract Award, Notice to Proceed & Invoice Summary
spspb	Small Procurements Standard Provisions Booklet (Cover Sheet and Index)
waiver	Waiver Request

## **Exhibit 6-I**

# **EMPLOYEE OR CONTRACTOR?**

### **AN AGREEMENT FOR PROFESSIONAL SERVICES MAY NOT BE EXECUTED WITH A PERSON, WHO IN EFFECT, MAY BE A STATE EMPLOYEE.**

Whenever the State has the right to exercise control of the performance of work to the extent of prescribing the manner in which it will be done, the person doing the work is an employee. If the elements of control and direction do not exist then the person is an independent contractor. A contractor is a person employed to perform a task without being subject to control except as to the final results.

A person may be serving in an employee relationship even though s/he is a highly skilled professional and any attempt by the State to exercise control over his work would not be well advised. It is the right to exercise direction and control rather than the actual exercise of these factors that determines the existence of an employer-employee relationship.

The following is a list of generally accepted determinants of an employer-employee relationship. If by applying several of these criteria, a proposed Agreement would establish such an employer-employee relationship, then the Agreement must not be executed:

1. A person who is required to comply with instructions about when, where and how s/he is to work is ordinarily an employee.
2. Integration of a person's services into agency operations generally shows that s/he is subject to direction and control.
3. The existence of a continuing relationship between an agency and a person who performs services is a factor tending to indicate the existence of an employer-employee relationship.
4. If a person must devote full time to the business of an agency, rather than engaging in other gainful work, s/he is probably an employee.
5. Doing work on the premises of an agency implies control, especially if the work is of such a nature that it could be performed elsewhere.
6. Payment for work by the hour, week or month is usually the manner for compensating employees. Independent contractors are customarily paid by the job or on a task-completed basis.
7. Payment of a person's business or traveling expenses may be a factor indicating control.
8. The furnishing of tools and materials by the State is indicative of control over an employee.
9. A significant investment by a person in facilities used by him to perform services for another tends to show an independent contractor status.
10. A person who is in a position to realize a profit or suffer a loss as a result of the services is generally an independent contractor.
11. The fact that a person makes his services available to the general public is usually indicative of an independent contractor status.
12. An employee has the right to end a relationship with the employer at any time without incurring liability. An independent contractor, on the other hand, cannot; nor can the Contractor be fired so long as s/he produces results that measure up to contract specifications.



## Exhibit 7-1

# ESTIMATING CONSULTANT'S BILLING RATES

The table below shows one method of estimating hourly Billing Rates for Consultant Services. On the left side of the page are listed 2000 Anchorage Area (Schedule 2A) State Pay Rates (without Indirect Cost or Fee (profit), and on the right side the same rates are increased by a typical Consultants Indirect Cost Rate of 150% and a Fee of 12% (which equates to a multiplier of 2.8). (State rates for Fairbanks and other areas may be different due to cost of living adjustments.)

STATE & ESTIMATED CONSULTANT DIRECT LABOR RATES ( <u>without</u> Indirect Costs or Fee)			EQUIVALENT CONSULTANT BILLING RATES ( <u>with</u> Indirect Costs and Fee)		
State Position & (Range)	1 Year (Step A)	5 Year (Step E)	Pay Range		Consultant Position
			Low	High	
Administrative Clerk II (GGU 8)	\$ 12.76	\$ 14.36	\$ 35.73	\$ 40.20	Secretary I
Drafting Tech II (GGU 13)	17.26	19.70	48.32	55.16	Draftsperson
Drafting Tech III (GGU 15)	19.70	22.60	55.16	63.28	Basic Technician I
Engineering Asst I (GGU 16)	21.50	24.36	53.75	68.20	Basic Technician II
Engineering Asst II (GGU 18)	24.36	27.89	68.20	78.09	Basic Technician III
Engineering Asst III (GGU 20)	27.89	31.89	78.09	89.29	Sub-Professional No Registration
Engineer I (GGU 21)	29.84	34.10	83.55	95.48	Professional Recent Registration
Engineer II (GGU 22)	31.89	36.50	89.29	102.20	Professional Registration < 5 yrs
	5 Year (Step F)	9 Year (Step K)			
Technical Engineer I (GGU 23)	34.10	39.10	95.48	109.48	Professional Registration > 5 yrs
Technical Engineer II (GGU 24)	36.50	41.94	102.20	117.43	Leader/Sr Technician < 5 years with firm
Section Chief (SU 24)	39.03	41.96	109.28	117.48	Principal < 5 years with firm
Branch Chief (SU 25)	41.96	45.10	117.48	126.28	Leader/Sr Technician > 5 years with firm
Director (SU 26)	43.46	46.66	121.68	130.64	Principal > 5 years with firm

## Exhibit 7-2

# SAMPLE - PRESOLICITATION PRICE ESTIMATE

This exhibit is a very simplified sample. For most contracts with multiple tasks and subtasks, the estimate would likely be a collection of spreadsheets for the Prime Contractor and each Subcontractor separately showing the labor cost, markup for employee benefits and company overhead, expenses and profit for each firm and for each task/subtask to be accomplished. See the files: "estimate.xls" and "ins-est" for further guidance.

Boondocks International Airport  
Project # 78-93

### DIRECT COST OF DIRECT LABOR (DCDL)

<u>Job Classification</u>	<u>Hours</u>	<u>\$/Hour</u>	<u>Estimated Cost</u>
Project Manager (3 days/week - Range 22)	1728	35.00	\$ 60,480
Designer (full time, 18 months - Range 21)	2880	30.00	86,400
Draftsperson (2 days/week - Range 13)	1152	20.00	<u>23,040</u>

Total DCDL = \$ 169,920

### INDIRECT COST (IDC)

Indirect Cost Rate (IDCR) = 150% of Direct Cost of Direct Labor

IDC Amount = \$ 254,880

Subtotal for DCDL+IDC = \$ 424,800

### OTHER DIRECT COST (ODC)

<u>Subcontracts</u>	<u>Estimated Cost</u>
Subcontract for Photogrammetric Mapping	\$ 7,500
Subcontract for Financial/Bond Specialist	<u>12,000</u>
Subtotal for Subcontracts = \$ 19,500	

<u>Expenses</u>	
Reproduction (200 pages x 2 (draft+final) x 10 copies x \$1.00/page)	<u>4,000</u>
Subtotal for Expenses = \$ 4,000	

Total ODC = \$ 23,500

TOTAL ESTIMATED COST (Sum of DCDL+IDC+ODC) = \$ 448,300

FEE (Assume about 10% of DCDL+IDC) = \$ 42,480

TOTAL ESTIMATED PRICE = \$ 490,780

Prepared By: \_\_\_\_\_  
Perry Mason Date

# Exhibit 8-1

## SAMPLE - PRICE PROPOSAL

*Note: For complicated or large projects with multiple tasks and subtasks, the sample price proposal shown here would likely be a summary page attached to a collection of spreadsheets providing Direct Costs of Direct Labor, Other Direct Costs and Fee for each task/subtask (See the file: "estimate.xls").*

**BROWN AND LANG INC.**  
**June 30, 1993**

**Boondocks International Airport**  
**Project # 78-93**

### DIRECT COSTS OF DIRECT LABOR (DCDL)

<u>Job Classification</u>	<u>Name</u>	<u>Hours</u>	<u>\$/Hour</u>	<u>Estimated Cost</u>
Project Manager	Buster Brown	2370	28.00	\$ 66,360
Designer	Lana Lang	3550	24.00	85,200
Computer Operator	---	1660	16.75	27,805
				<u>Total DCDL = \$ 179,365</u>

### INDIRECT COSTS (IDC)

Indirect Cost Rate (IDCR) = 152% of Direct Cost of Direct Labor

IDC Amount = \$ 272,635

### OTHER DIRECT COSTS (ODC)

<u>Subcontracts</u>	<u>Quantity</u>	<u>\$/Unit</u>	<u>Estimated Cost</u>
Mo's Mapping - Subcontract for Photogrammetric Cross Sections	----	----	\$ 5,036
Quick Print - Subcontract for Reproduction, 200 cps of 400 dwgs	----	----	18,000
			Subtotal for Subcontracts = \$ 23,036
<u>Expenses</u>			
CADD	1660 Hours	50.00	83,000
Van 4x4	3360 Hours	5.00	16,800
Travel ANC/FBX, 2 Trps, 3 Days, 2 Pers	----	----	3,400
Travel ANC/JNO, 2 Trps, 3 Days, 2 Pers	----	----	3,900
			Subtotal for Expenses = \$ 107,100
			<u>Total ODC = \$ 130,136</u>

### TOTAL ESTIMATED COST

(Sum of DCDL+IDC+ODC) = \$ 582,136

### FEE

(Proposed AMOUNT) = \$ 69,856

### TOTAL PROPOSED PRICE

= \$ 651,992

Prepared By:

Buster Brown \_\_\_\_\_ Date \_\_\_\_\_  
 I-live-in-a-shoe  
 (907) 274-1722

## Exhibit 8-2

# CALCULATION OF OVERTIME RATES

B = Base, Hourly, Direct Labor Rate paid to employee  
FB = Fringe Benefits (Social Security, health plans, pensions, vacation/sick leave, etc.)  
OH = Overhead Costs (facilities, utilities, Indirect Labor, etc.)  
FEE = Profit = (Price-Cost)

### Regular Billing Rate

If FB = 30%, OH = 120% (total Indirect Cost Rate = 150%), and FEE = 12%, then:

Regular Billing Rate =  $(B + 30\%B + 120\%B) \times (1 + 12\%) = 2.8 \times B$ .

If B = \$20/hour, then Rate =  $2.8 \times \$20.00 = \$56.00/\text{hour}$ .

### Overtime (OT) Billing Rate

Assume 50% OT pay for employees, then:

Overtime Billing Rate =  $(1.5) \times \text{Regular Billing Rate} = (1.5) \times [2.8 \times (B)] = 4.2 \times B$ .

If B = \$20/hour, then OT Hourly Billing Rate =  $4.2 \times \$20.00 = \$84.00/\text{hour}$ .

### Notes

(1) All percentages were assumed for this example. Actual percentages may vary for each Contractor and each Contract.

(2) This example assumes all overtime costs of direct labor are included in the cost pools for Fringe Benefits and for Direct Labor that are used to calculate the applicable Indirect Cost Rate (FB + OH).

(3) In a Cost Plus Fixed Fee contract, the Direct Labor Rate for Overtime Hours would =  $1.5 \times \text{Regular Direct Labor Rate}$ , e.g.  $1.5 \times \$20.00 = \$30.00/\text{hour}$ .

# Exhibit 8-3

## SAMPLE - FEE OBJECTIVE WORKSHEET

This exhibit is a copy of the first page of the file: "feewksht", completed for the Brown & Lang Price Proposal (Exhibit 8-1) used in Chapter 8 for demonstration of Cost Analysis. See the file: "feewksht" for an explanation of the percentages in column d.

Project Title: \_\_\_\_\_

Contractor or Subcontractor: \_\_\_\_\_

Prepared by & Date: \_\_\_\_\_

### COMPLY WITH INSTRUCTIONS BEGINNING ON PAGE 2 FOR ASSIGNING FEE PERCENTAGES.

1a	b	c	d	e	f	g	h
2	COST COMPONENT AND SUB-FACTORS	FEE RANGE	FEE ASSIGNED		<sup>A</sup> ESTIMATED COST [ \$ ]		FEE (PROFIT) OBJECTIVE [ \$ ]
3	<b>FEE FOR DIRECT COST OF DIRECT LABOR (DCDL)</b>		[ Percent ]				
4	Method of Payment	0 to 7.00%					
5	Magnitude of DCDL	1.50 to 3.00%					
6	Complexity of Services	0 to 1.50%					
7	Performance Methods	0 to 1.50%					
8	Professional or Non-professional Services	0 to 1.00%					
9	Distinct Qualifications	0 to 0.50%					
10	Period of Contract	0 to 0.50%					
11	Sum of Lines 4 through 10 TOTAL ABOVE PERCENTAGES>>>			X		=	
12	<sup>B</sup> FEE FOR INDIRECT COST (IDC) <i>is based on the Direct Labor Amount</i>		15	X	<sup>C</sup>	=	
13	<sup>D</sup> FEE FOR SUBCONTRACTS						
14	Subcontract:	0 to 10 % for		X		=	
15	Subcontract:	Fixed Price		X		=	
16	Subcontract:	Subcontracts		X		=	
17	Subcontract:			X		=	
18	Subcontract:	0 to 5 % for		X		=	
19	Subcontract:			X		=	
20	Subcontract:	Cost		X		=	
21	Subcontract:	Reimbursement		X		=	
22	Subcontract:	Subcontracts		X		=	
23	Additional Fee for all above DBE subs	2%		X		=	
24	<b>FEE FOR COMPANY OWNED EQUIPMENT OR OTHER SPECIAL EXPENSES: 8% for CADD =</b>						
25	TOTAL FEE NEGOTIATION OBJECTIVE BASED ON <sup>E</sup> _____ Method of Payment						

- NOTES:**
- A. Read Instructions to determine amounts to be entered in Column f.
  - B. The Fee for Indirect Cost is calculated as 15% of the amount estimated for Direct Labor - **NOT OF THE AMOUNT FOR INDIRECT COST.**
  - C. CAUTION: The amount to be entered in column f, line 12 is the same as for column f, line 11. See Instructions for line 12.
  - D. There is no Fee for Other Direct Costs (Expenses) except those listed in lines 14 through 23.
  - E. Enter Method of Payment assumed in line 4.

## Exhibit 8-4

# METHODS OF PAYMENT COMPARISON

CONTRACT ESTIMATE	
COST COMPONENT	AMOUNT
Direct Labor	\$200,000
Indirect Cost (@ 150% of DL)	\$300,000
Expenses	\$100,000
Subtotal of Costs	\$600,000
Fee (@ 10% of DL + IDC)	\$50,000
Total Estimated Price	\$650,000

ACTUAL COSTS	
LOW	HIGH
\$150,000	\$300,000
\$225,000	\$450,000
\$75,000	\$150,000
\$450,000	\$900,000

METHOD OF PAYMENT	CONTRACT PRICE	ACTUAL COST vs FINAL PAYMENT		RESULTANT FEE **	
		LOW COST	HIGH COST *	LOW	HIGH
<b>Firm Fixed Price</b>	\$650,000	\$450,000 vs \$650,000	\$900,000 vs \$650,000	\$200,000 53.3%	\$(250,000) loss
<b>Fixed Price Plus Expenses</b>	\$550,000 + ≤ \$100,000	\$450,000 vs \$625,000	\$900,000 vs \$700,000	\$175,000 46.7%	\$(200,000) loss
<b>Cost Plus Fixed Fee</b>	≤ \$600,000 + \$50,000	\$450,000 vs \$500,000	\$900,000 vs \$950,000	\$50,000 13.3%	\$50,000 6.7%
<b>Time and Expenses ***</b>	≤ \$650,000	\$450,000 vs \$487,500	\$900,000 vs \$975,000	\$37,500 10.0%	\$75,000 10.0%

\* Final payments higher than the contract price assume that the Contractor timely notified the Contracting Agency about potential overruns of reimbursable costs and that the Agency issued a contract amendment in order for the Contractor to complete performance of the contract.

\*\* Fee **PERCENTAGES** were calculated by dividing the amount of Resultant Fee by the sum of actual Direct Labor Cost and Indirect Cost (does not include Expenses).

\*\*\* The Fee **AMOUNT** for Time and Expenses was calculated at ten percent of the actual costs for Direct Labor plus Indirect Cost. For a T&E contract, Fee is included in the hourly Billing Rates and would not be addressed separately as is done in this table to compare it with the other Methods of Payment.

Clearly, when the Contractor and Contracting Agency are able to sufficiently define the services required such that a Fixed Price contract results, then the Agency is more likely to benefit with a fair and reasonable final price within budget and the Contractor has the greatest opportunity for profit (or loss).

A Time and Expenses contract, however, provides little restriction on the final price the Agency may be required to pay for complete contract performance. It guarantees the Contractor a fixed **percentage** for profit with no incentive for cost control. The more labor expended, the higher the price – and profit.

CAUTION: These examples are very generalized. Contracts should be negotiated with the intent of providing a fair and reasonable profit. A Contractor's losses will most likely be reflected in quality of services, particularly in final work products.

## Exhibit 9-I

# SAMPLE - NEGOTIATION OBJECTIVES

*Note: For large projects with multiple tasks and subtasks, the sample price proposal, negotiation objectives, and explanatory comments shown here would likely be a summary page attached to a collection of spreadsheets providing Direct Costs of Direct Labor Costs, Other Direct Costs and Fee for each task/subtask.*

**BROWN AND LANG INC.**  
June 30, 1993

**Boondocks International Airport**  
**Project #78-93**

### DIRECT COSTS OF DIRECT LABOR (DCDL) 1 2

Job Classification	Name	Hours		\$/Hour	Estimated Cost
Project Manager	Buster Brown	2370	2085	28.00	\$ 66,360
Designer	Lana Lang	3550	3125	24.00 <span style="border: 1px solid black; padding: 0 5px;">6</span>	85,200
Computer Operator	---	4660	1460	16.75	27,805
					Total DCDL = \$ 179,365

### INDIRECT COSTS (IDC)

Indirect Cost Rate (IDCR) = 152% of Direct Cost of Direct Labor      IDC Amount = \$ 272,635

### OTHER DIRECT COSTS (ODC)

	Subcontracts	Quantity	\$/Unit	Estimated Cost
<span style="border: 1px solid black; padding: 0 5px;">3</span>	Mo's Mapping - Photogrammetric Cross Sections		----	\$ 5,036
	Quick Print - Reproduction, 200 copies of 400 drawings		----	18,000
Subtotal for Subcontracts = \$ 23,036				
	Expenses			
<span style="border: 1px solid black; padding: 0 5px;">4</span>	CADD	1660 Hours	50.00	83,000
	Van 4x4	3360 Hours	5.00	16,800
<span style="border: 1px solid black; padding: 0 5px;">5</span>	Travel ANC/FBX, 2 Trips, 3 Days, 2 Pers	----	----	3,400
	Travel ANC/JNO, 2 Trips, 3 Days, 2 Pers	----	----	3,900
Subtotal for Expenses = \$ 107,100				

### TOTAL ESTIMATED COST

### FEE

### TOTAL PROPOSED PRICE

Total ODC = \$ 130,136  
(Sum of DCDL+IDC+ODC) = \$ 582,136  
(Proposed AMOUNT) = \$ 69,856  
= \$ 651,992

### NEGOTIATION OBJECTIVES

**LOW                      HIGH**

\$43,736		\$66,360
75,000		85,200
24,455		27,805
143,191		179,365

217,650	<span style="border: 1px solid black; padding: 0 5px;">7</span>	272,635
---------	---	---------

222,662	<span style="border: 1px solid black; padding: 0 5px;">10</span>	278,912
---------	--	---------

5,036	<span style="border: 1px solid black; padding: 0 5px;">8</span>	5,036
7,500	<span style="border: 1px solid black; padding: 0 5px;">9</span>	9,000

0	<span style="border: 1px solid black; padding: 0 5px;">9</span>	0
6,000	<span style="border: 1px solid black; padding: 0 5px;">11</span>	12,000
1,175	<span style="border: 1px solid black; padding: 0 5px;">12</span>	2,350
0	<span style="border: 1px solid black; padding: 0 5px;">13</span>	1,415

380,552		481,801
37,473	<span style="border: 1px solid black; padding: 0 5px;">14</span>	46,916
481,025		528,717

385,564		488,801
49,394	<span style="border: 1px solid black; padding: 0 5px;">10</span>	61,847
434,958		549,925

## Exhibit 9-1 Continued (Comments for Negotiation Objectives)

### SERVICES AND SCHEDULE

- 1 This sample assumes that the work plan, tasks, and work products as defined are acceptable. Schedule appears a bit long. Labor hours proposed for Lana Lang, full time effort, set the contract length at 20.5 months; 2.5 months longer than Agency estimate. Buster Brown's time equates to 70% of Lang's time, not the 50% of full time stated in the proposal. Computer (CADD) Operator hours are greater than the estimate. Reduce all labor hours  $(20.5 - 18.0 / 20.5) = 12\%$ .
- 2 Brown hours high and he will require more than 30% of his time to manage other projects. Reduce his hours to 50% of Lang's (full time) effort.  $3125/2 = 1562$ .
- 3 Photogrammetry and Reproduction Subcontracts - OK.
- 4 CADD use OK. One reason why firm was selected. Van use is also OK.
- 5 Need to delete some travel. Trips to Fairbanks and Juneau proposed for familiarization with functional requirements and operations. One trip to Fairbanks appears reasonable. Juneau Airport is not state owned and its geographical conditions are not at all similar to those at FIA, AIA or the project site. Agency staff can coordinate with Juneau Airport for any necessary information.

### COSTS

- 6 Rates OK – Brown @ \$28/hr equates to a Technical Engineer, GGU Rge 21; Lang @ \$24/hr equates to Civil Engineer II, GGU Rge 20; Computer (CADD) Operations @ \$16.75 equates to a Drafting Tech III, GGU Rge 14.
- 7 Indirect Cost - Contractor proposed 152% with CADD charged as a Direct Cost. Audit established a maximum IDCR of 172.5%. The 152% rate is acceptable particularly since the Audit Report shows that 66.82% of the audit IDCR is for Fringe Benefits. Usual Fringe Benefits for Contractors is about 30-40%. When questioned about this, Auditors explained that Brown and Lang had a special retirement plan only for a few of its employees. If we consider only 40% for Fringe Benefits, then the Audit IDCR would be reduced to 145%  $(172.52 - 66.82 + 40)$ .
- 8 Proposed Subcontract in the amount of \$5,036 for photogrammetric costs is acceptable. The amount is reasonable and it is based on adequate competition since the Contractor obtained 3 proposals for the work. Moe's Mapping was selected based on second low offer and ten workdays versus 16 workdays for lowest offer.

Larry's Air Photo Services	\$4,985	16 Work Days
Curly Photogrammetry Co.	\$5,490	15 Calendar Days
Moe's Mapping	\$5,036	10 Work Days
- 9 Subcontractor charges \$2.25/drawing for color reproduction. Only 10 copies will be needed of any drawings thus estimate may be cut in half. Check print shops for costs. Also consider black and white reproductions for some of the drawings. Also how were number of drawings estimated? Counter with \$7,500 low, \$9,000 high.
- 10 Computer Assisted Design Drafting equipment is the largest cost item. Contractor's estimate is based on \$50/hour standard unit rate which includes operator. Since the CADD estimate of 1,660 includes operator, why does the Direct Labor Cost estimate include 1,660 hours for a computer operator at \$16.75/hour?

It appears that the CADD operator hours are double counted in the estimate. Subtracting the operator costs  $(\$16.75 \times [1+1.52] = \$42.21)$  from the proposed \$50/hr rate leaves \$7.99/hr for equipment costs. The Audit Report stated that all equipment expenses (including CADD) are included in the IDCR - thus no separate equipment rate charges are allowed. The Audit Report also stated, however that Brown & Lang's proposed IDCR of 152% anticipated that the CADD rate would be approved.

It is unlikely that the Contractor will accept an IDCR of 152% with no additional compensation for CADD. Since the Audit IDCR is 172.52%, there is some room for negotiation. Upon request, the Auditor reviewed the accounting data and established that 3.5% of the 172.5% can be attributed to CADD Expenses. Change the proposed amount for CADD to zero, but be prepared to offer an increase in the proposed IDCR from 152% to 155.5%. This would increase Indirect Cost (based on the low estimate of labor) by  $(143.191) \times (0.35) = \$5,012$  or  $\$5,012 / 1,660 \text{ hrs} = \$3.02/\text{hr}$  for CADD operator. Then the firm would receive the equivalent of  $42.21 + 3.02 = \$45.23/\text{hr}$  which is close to the \$50/hr proposed for CADD.



## Exhibit 9-1 Continued (Comments for Negotiation Objectives)

11 Contractor estimated company van based on 40 hours/week for 84 weeks at \$5/hr or \$16,800. This represents \$40/day or \$200/week, which appears reasonable; however it is doubtful the van would be used only for this project. Also, is the van a personal employee vehicle? Leased van might cost \$6,000/year. Two years = \$12,000. Assume 50% use on the project for low = \$6,000, high = \$12,000.

12 Contractor proposed trips to Fairbanks and Juneau for familiarization with functional requirements and operations. One trip to Fairbanks appears reasonable, Juneau Airport is not state owned and its geographical conditions are not at all similar to those at FIA, AIA, or the project site. Agency staff can coordinate with Juneau Airport for any necessary information. Food and lodging should not exceed state per diem rates unless specific reasons are cited during negotiations. The costs for trips to Fairbanks are:

2 RT @ \$250	=	\$500	(Check <u>current</u> airline fares)
6 days @ \$85	=	510	
3 days @ \$55	=	<u>\$165</u>	
One Trip	=	1,175	low
Two Trips	=	\$2,350	high

13 Trips to Juneau (probably not required per comment #12)

2 RT @ \$325	=	\$650	
6 days @ \$100	=	600	
3 days @ \$55	=	<u>\$165</u>	
One Trip	=	1,415	high
No Trip	=	0	low

### FEE

14 Contractor proposed \$69,856 which is 12% of total cost (DCDL + IDC + ODC). Applying the Fee percentages shown in Exhibit 8-3, Sample - Fee Objective Worksheet, to the low/high cost Negotiation Objectives yields the following Fee amounts:

Fee Percentage	Fee Amount & % of total cost & % of DCDL+IDC	
	<u>Low</u>	<u>High</u>
11.1% x DCDL	= \$15,894	\$19,910
15.0% x DCDL	= 21,478	26,905
2% x Map Sub	= <u>101</u>	<u>101</u>
	\$37,473	\$46,916
	= 9.85% of all costs	= 9.74% of all costs
	= 10.38% of DCDL+IDC	= 10.38% of DCDL+IDC
OR, if we modify	\$15,894	\$19,910
IDCR for CADD per	33,399	41,836
Comment # 10:	<u>101</u>	<u>101</u>
	\$49,394	\$61,847
	= 12.81% of all costs	= 12.67% of all costs
	= 13.50% of DCDL+IDC	= 13.50% of DCDL+IDC

Contractor proposed a Fee of 12% of all costs. If Contractor accepts the changes for CADD, that percentage will be exceeded.

### METHOD OF PAYMENT

15 Because the scope of this contract involves a lot of investigation to determine requirements for the project, labor effort required cannot be estimated with any reasonable degree of certainty. Thus, a Fixed Price contract is not appropriate and a Cost Plus Fixed Fee contract as assumed in our estimate is the Method of Payment to use.

## Exhibit 10-1

# CHART OF PROTEST / APPEAL ACTIVITIES

Periods for "**Contract Controversies**" (**Claims**) are different from this table (per AS 36.30.620/.630).

If the last calendar day of a period listed in this chart falls on a weekend or holiday, the period will be extended to the first workday following the weekend or holiday.

ACTIVITY	TIME PERIOD
Protest of Requirements/Contents of RFP	Ten (10) Agency workdays prior to the submittal deadline. <b>[FOR SMALL PROCUREMENTS - SUCH PROTESTS SHOULD BE CONSIDERED TIMELY IF RECEIVED PRIOR TO THE DATE AND TIME PROPOSALS ARE DUE.]</b>
Protest of Award	Ten (10) days following date of issue of "Notice of <u>Intent</u> to Award," or service in person, by FAX or other machine transmission. <b>[FOR SMALL PROCUREMENTS - THE DAY FOLLOWING <u>NOTICE OF AWARD</u>.]</b>
Contracting Officer Decision (COD)	Fourteen (14) days from receipt of protest-may be extended up to 26 days on approval of Commissioner.
Appeal of COD	Ten (10) days following date of receipt of Contracting Officer's Decision.
Contracting Officer's Protest Report	Seven (7) days following receipt of Appeal.
Appellant Comments on Contracting Officer's Protest Report	Seven (7) days following mailing of Contracting Officer's Protest Report.
Commissioner Acceptance of Appeal	Fifteen (15) days from receipt of appellant comments or expiration of the time to file comments.
Schedule Hearing	No time limit.
Commissioner Issue Decision	Twenty (20) days from the close of the hearing record.

# Exhibit 15-1

## SAMPLE - MONTHLY PROGRESS REPORT

ATTENTION: (agency project manager; agency name)

FROM: (contractor's project manager; contractor's firm)

PROJECT: (project title)

PROJECT NO(S):

AGREEMENT NO.:

PROGRESS REPORT NO.:

DATE:

1. SUMMARY OF WORK PERFORMED DURING THE REPORT PERIOD
2. CUMULATIVE PROGRESS TO DATE
3. PERCENTAGE COMPLETION OF TASKS (OR TASKS GROUPS) CONTAINED IN APPENDIX B, STATEMENT OF SERVICES (OR IN APPENDIX C, COMPENSATION) IN THE AGREEMENT.

Tasks (or Tasks Group)

% Completed

4. FINDINGS/RESULTS TO DATE
5. EXPENDITURES FOR REPORT PERIOD AND CUMULATIVELY TO DATE  
(describe deviations from anticipated levels)
6. PLANS FOR SUCCEEDING PROJECT PERIOD
7. ANTICIPATED DELAYS/PROBLEMS
8. DIFFICULTIES DURING REPORT PERIOD

## Appendix A

# WAIVER REQUEST FOR PROCUREMENT

*For PSAs less than the Small Procurement limits, waivers may be approved by DOT&PF Regional and Systems Directors in accordance with DPOL 01.01.050, "Contracting Authority" (p. 3 of 3, Footnote #4). For other departments and agencies having a DOT&PF delegation of authority for construction related procurement, the waiver of requirements for PSAs less than the Small Procurement limits may be approved by the Commissioner of the department or head of the agency.*

1. DOT&PF FORM 25D-026 (file: "waiver"), shall be used to request and document exemptions from competitive solicitation requirements, e.g.:

- \* Emergency (Chapter 4)
- \* Single Source (Chapter 5)
- \* Limited Competition (Chapter 5)
- \* Use of Competitive Sealed Proposals in place of a Competitive Sealed Bids {AS 36.30.200(b)}
- \* Other requirements of the procurement methods specified in AS 36.30 and 2 AAC 12, or in this handbook.

2. Contract Manager must prepare the heading information plus PARTS 1 through 4, and obtain the Contracting (Procurement) Officer's signature in the indicated block. PARTS 3 and 4 must be very specific,

*i.e., why is this important, what is the public necessity, what is the expertise required, etc.? For federally funded projects, the Contract Manager must, at a minimum, verbally obtain Federal Agency concurrence before proceeding further with the waiver process.*

3. The form should then be given to a Regional Professional Services Coordinator (or for other than DOT&PF, the agency Contact Person) for review and processing with the DOT&PF Chief Contracts Officer in the Commissioner's Office.

4. Within 15 days of executing the contract, the Contract Manager must complete Part 6, Record of Procurement, on the approved Waiver form and submit a copy through a Professional Services Coordinator (or agency Contact Person) to the Chief Contracts Officer. When multiple contracts are awarded under an Emergency Procurement, information pertaining to all the contracts shall be attached to the form in the format shown in Part 6.

# Appendix B INDEX AND PARTIAL COLLECTION OF REGULATORY DOCUMENTS

DOT&PF Policy.....	DPOL # 10.02.010 TITLE: Procurement and Property, CHAPTER: Contracting, SUBJECT: Policy Pertaining to the Selection, Negotiation, Award and Administration of Construction Related Professional Services Agreements.
DOT&PF Procedure.....	DPDR # 10.02.010 SUBJECT: Procedure for Solicitation and Administration of Construction Related Professional Services Agreements.
DOT&PF Policy.....	DPOL # 01.01.050 TITLE: Office of the Commissioner, CHAPTER: Delegation of Authority, SUBJECT: Contracting Authority
DOT&PF ..... Financial Management Operations Manual	FMOM # 04.05.010 SUBJECT: Contract Payments

## TO REVIEW THE FOLLOWING DOCUMENTS, SEE YOUR PROFESSIONAL SERVICES COORDINATOR.

AS 36.30 .....	State Procurement Code
2 AAC 12.....	Procurement Regulations
48 CFR Part 31..... Federal Acquisition System	"Contract Cost Principles and Procedures"
49 CFR 18.36..... Transportation	Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, Section 36 - Procurement (formerly Attachment "O" to OMB Circular A-102, "The Common Rule").
23 CFR 172..... Highways	"Administration of Engineering and Design Related Contracts"
23 CFR 420.....	Planning and Research Program Administration
23 CFR 450.....	Planning Assistance and Studies
FAA AIP Handbook.....	Airport Improvement Program (AIP) Handbook, Department of Transportation, Federal Aviation Administration.
FAA AC 150/5100-14C .....	Architectural, Engineering and Planning Consultant Services for Airport Grant Projects.

FOR NON-CONSTRUCTION RELATED PROFESSIONAL SERVICES, SEE THE STATE ADMINISTRATIVE MANUAL (AAM), SECTION 81 - GENERAL PROCUREMENT AND SECTION 82 - PROFESSIONAL SERVICES CONTRACTS.

## **Appendix C**

### **3.5 INCH DISKETTES CONTAINING RFP&PSA FILES**

**in**

**WIN MS WORD 7.0**

**plus some  
EXCEL**

**are in**

**the following diskette holder**